

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 54

CARL BRADEN, PETITIONER,

vs.

UNITED STATES.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MARCH 10, 1960
CERTIORARI GRANTED APRIL 23, 1960**

SUPREME COURT OF THE UNITED STATES

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[fol: A]

**IN UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

CAPTION

Pleas and Proceedings had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D., 1959, before the Honorable Joseph C. Hutcheson, Jr., the Honorable Ben F. Cameron and the Honorable Warren L. Jones, Circuit Judges:

CARL BRADEN, Appellant,

versus

UNITED STATES OF AMERICA, Appellee.

Be It Remembered, That heretofore, to-wit, on the 28th day of May, A. D., 1959, a transcript of the record in the above styled cause, pursuant to an appeal from the United States District Court for the Northern District of Georgia, was filed in the office of the Clerk of the said United States Court of Appeals for the Fifth Circuit, said appeal having been docketed on the 25th day of March, A. D., 1959, in said Court of Appeals as No: 17705, as follows, to-wit:—

[fol. 1]

**IN UNITED STATES COURT OF APPEALS,
FOR THE FIFTH CIRCUIT**

No. 21757 (2 U.S.C. 192).

UNITED STATES OF AMERICA,

versus

CARL BRADEN.

**APPELLANT'S DESIGNATION OF PORTIONS OF RECORD
TO BE PRINTED—Filed May 29, 1959**

The Appellant herein considers that the whole of the record is not necessary to be considered by the Court, and in accordance with the provision of Rule #23 files this his request that only designated portions thereof be printed, to-wit:

- (1) The indictment, Counts 1 to 6, both inclusive.
- (2) Defendant's motion to dismiss and the Court's ruling thereon.
- (3) Defendant's motion for Bill of Particulars.
- (4) The Government Bill of Particulars.
- (5) Minutes showing arraignment and plea of not guilty.
- (6) Minutes of trial.
- [fol. 2] (7) Defendant's motion for judgment of acquittal and the Court's order denying the same.
- (8) Defendant's written requested instructions and the Court's action thereon.
- (9) Verdict of jury, judgment and sentence.
- (10) Stenographic transcript of the evidence, and all motions and rulings made orally at trial, and the entire charge of the Court. (Omitting arguments of counsel.)

(11) The following exhibits only, referred to at #1, page 15 of the stenographic transcript, #2 page 15 thereof, #3 page 15 thereof, #9 pages 18-19 thereof, but only the following portions from "Wednesday July 30th, 1958" on page #6 of the Exhibit to line of asterisk on page 20 thereof.

(12) This designation and statement of points filed herein.

(13) Motion in arrest of judgment and Court's order denying the same.

(14) Notice of appeal.

John M. Coe, Appellant's Attorney; Leonard B. Boudin, Appellant's Attorney; Conrad J. Lynn, Appellant's Attorney; C. Ewbank Tucker, Appellant's Attorney.

[fol: 3] . Certificate of service (omitted in printing).

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CROSS-DESIGNATION OF PORTIONS OF RECORD TO BE
PRINTED—Filed 6/3/59

The United States of America, appellee, acting by and through counsel, hereby requests that the following portions of the record, not designated for printing by appellant, be printed pursuant to Rule 23 of this Court, to-wit:

1. Pages 3 through 6 of U.S. Exhibit No. 9, entitled "Proceedings against Carl Braden", beginning on Page 3 with "Tuesday, July 29, 1958", and ending with "the security of this great Nation" at the top of Page 6. (Also the rest of said Exhibit No. 9 previously designated for printing by appellant, being the rest of Page 6 through the asterisks on Page 20.)

2. The opening statements of both counsel for the government and of counsel for the defense, being Pages 2 through 14 of the trial transcript.

[fol. 4] 3. The exceptions to the charge by appellant appearing on Pages 125-126 of the trial transcript and the re-charge of the Court appearing on Pages 126 and 127 of the trial transcript.

4. The opening and concluding argument by Government counsel, and the concluding argument of defense counsel, appearing at Pages 90 through 109 of the trial transcript.

Counsel for appellee believe that the above designated portions of the record should be printed and are necessary for a complete consideration by this Court of the questions involved in this appeal, and particularly with reference to Point 4 of the Statement of Points heretofore filed in this appeal by the appellant.

Appellee, while not designating for printing the other U. S. Exhibits introduced into evidence by the government because of their length, and because the trial Court directed that they be forwarded as original exhibits, does not waive its contention that said Exhibits are material to the issues, and to the finding of the Court on the question of actual pertinency, and appellee requests the Court to consider such Exhibits as evidence, even though they are not designated for printing by either party herein.

Charles D. Read, Jr., Acting United States Attorney;
J. Robert Sparks, Assistant United States Attorney;

[fol. 5] Certificate of service (omitted in printing).

[fol. 6]

IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

INDICTMENT—Filed December 2, 1958

The Grand Jury Charges:

On July 30, 1958, in the Atlanta Division of the Northern District of Georgia, a subcommittee of the Committee on Un-

American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828), and to H. Res. 5, 85th Congress.

Defendant, Carl Braden, appeared as a witness before that subcommittee, at the place and on the date above stated and was asked questions which were pertinent to the question then under inquiry. Then and there the Defendant knowingly, wilfully and unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the questions which were asked of the Defendant and which he refused to answer.

Count One.

And did you participate in a meeting here at that time?

[fol. 7]

Count Two.

Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Count Three.

Are you connected with the Emergency Civil Liberties Committee?

Count Four.

Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Count Five.

Were you a member of the Communist Party the instant you affixed your signature to that letter?

Count Six.

I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

[fol. 8] A True Bill

C. D. LeBey, Foreman.

At Atlanta, Georgia.

James W. Dorsey, United States Attorney; J. Robert Sparks, Assistant United States Attorney.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO DISMISS INDICTMENT—
Filed January 12, 1959

Defendant moves that the indictment herein and each count thereof be dismissed on the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The indictment shows upon its face that the questions asked, which the Defendant is charged with refusing to answer, relate to political beliefs, association and kindred matters, inquiry as to which the committee is not empowered to make, because of the provisions of the 1st Amendment to the Constitution of the United States securing the freedom of speech, press, assembly and petition.

[fol. 9] 3. The indictment omits an essential element of the alleged offense in that it fails to state the respect in which it is claimed that the questions put to Defendant which he refused to answer were material and relevant to the inquiry of the congressional committee before which Defendant testified.

4. The statute and resolution creating the Committee of Un-American Activities of the House of Representatives and committing certain matters of inquiry thereto are invalid as applied in the present case; and United States

Code, Title 2, Sec. 192, can not be constitutionally applied to punish the withholding of testimony from said committee.

John M. Coe, 205-206 Bell Building, Pensacola, Florida; Leonard B. Boudin, 25 Broad Street, New York 4, New York, Attorneys for Defendant.

[fol. 10]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR BILL OF PARTICULARS—
Filed January 12, 1959

The defendant moves that the Court order the United States to file a bill of particulars setting forth the following:

1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be pertinent to the question under inquiry referred to in item 1 above.

Dated, Pensacola, Florida, January, 1959.

John M. Coe, Leonard B. Boudin, Attorneys for Defendant.

[fol. 11]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF ARRAIGNMENT AND PLEA—
January 12, 1959

Came the United States by counsel, James Robert Sparks, Assistant United States Attorney, and came the defendant in person and by counsel, John M. Coe, Esq.

Whereupon counsel for defendant presented a motion to dismiss which was taken under advisement by the Court.

The following plea was entered, to wit:

Plea.

I, Carl Braden, defendant, having received a copy of the within Indictment and having waived arraignment, Plead Not Guilty thereto.

In Open Court this 12 day of Jan., 1959.

Carl Braden, Defendant.
John M. Coe, Attorney for Defendant.

[fol. 12]

IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS BY PLAINTIFF—Filed January 16, 1959

Now comes the United States of America, acting by and through counsel, and in response to Request No. 1 of the Motion for Bill of Particulars filed by the above-named defendant on January 12, 1959, files this its Bill of Particulars as to the information sought in said Request No. 1, as follows:

I.

The question under inquiry by the Sub-committee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda."

Charles D. Read, Jr., Acting United States Attorney;
J. Robert Sparks, Assistant United States Attorney.

[fol. 13]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—January 19, 1959

The defendant has filed a motion to dismiss the indictment in the above case on several grounds and this motion is now properly before the Court for determination under the Local Rules of this Court.

After due consideration of the motion and the several grounds thereof, and of the briefs in support and opposition thereto, the Court concludes that the indictment is sufficient under the provisions of the Federal Rules of Criminal Procedure and it is therefore.

Ordered that defendant's motion to dismiss be, and the same is hereby overruled and denied.

This the 19th day of January, 1959.

Boyd Sloan, United States District Judge.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF TRIAL

The United States appeared by counsel, James Robert Sparks, Assistant United States Attorney, and the defendant appeared in person and by counsel, John M. Coe and Leonard B. Boudin, Esqs.

[fol. 14] Issue having heretofore been joined, the Court qualified all jurors for cause and verbally ordered that a jury be called to try said issue.

After counsel had exercised all peremptory challenges, the jurors selected to try said issue came, to wit:

1. Eugene Franklin Adams.
2. W. M. Blackmon.
3. W. D. Flowers.
4. S. G. Selers.
5. William H. Golden.

6. John W. Ficken.
7. Forrest C. Castellaw, Jr.
8. T. Henry Fitzpatrick.
9. Warren C. Childs.
10. Sidney S. Johnson.
11. Walter J. Brooke.
12. A. G. Moser.

Whereupon they were regularly impaneled and sworn by Johnny L. Pressley, Deputy Clerk.

[fol. 15] The following witness was sworn by Johnny L. Pressley, Deputy Clerk; to wit: (1) Richard Arens.

The rule was invoked and the following evidence was introduced:

By the United States: Documentary evidence: U. S. Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, ~~14~~, 15, 16, admitted.

Witness (1) Richard Arens.

~~Government~~ Rested.

There was no witnesses by defendant.

Defendant Rested.

Whereupon counsel for defendant submitted to the Court a written motion for a judgment of acquittal. After counsel for defendant had made verbal arguments in support of said motion, the Court verbally overruled the written motion.

Evidence Closed.

The evidence having been adduced in full, and after argument of counsel to the jury on the merits of the case, the charge of the Court was delivered. Exceptions to charge by defendant were noted and allowed.

Whereupon the jury retired to their room and entered upon their deliberation.

[fol. 16]

IN UNITED STATES DISTRICT COURT

VERDICT—January 22, 1959

We, the Jury, find the defendant Carl Braden Guilty on Count One; Guilty on Count Two; Guilty on Count Three; Guilty on Count Four; Guilty on Count Five; Guilty on Count Six.

This the 22 day of January, 1959.

John W. Ficken, Foreman.

Imposition of Sentence deferred to Enlarged Remanded Pend.

Report of Prob. Off.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR JUDGMENT OF ACQUITTAL—

Filed January 22, 1959

The Defendant moves the Court for a judgment of acquittal because:

(1) The evidence fails to establish any facts constituting the offense charged.

[fol. 17] (2) The evidence shows that the questions asked which the Defendant refused to answer, related to political speech, writing, association and kindred matters; inquiry as to which the Committee on Un-American Activities of the House of Representatives of the United States was not empowered to make, because of the provisions of the First amendment to the Constitution of the United States securing the freedom of speech, press, assembly and petition.

(3) The evidence fails to show that the questions asked which the Defendant refused to answer were pertinent or relevant to the subject matter of the investigation set forth in the bill of particulars, and that such relevancy and pertinency was shown to the Defendant at the time of the Committee hearing.

(4) That the evidence shows that the statute and resolution creating the Committee on Un-American Activities of the House of Representatives of the United States and committing certain matters of inquiry thereto are invalid as applied in the present case; and United States Code Title #2 Sec. 192 can not be constitutionally applied to punish this defendant for the withholding of the testimony sought by the said committee.

John M. Coe, Attorney for Defendant; Leonard B. Boudin, Attorney for Defendant.

[fol. 18]

IN UNITED STATES DISTRICT COURT

DEFENDANT'S REQUESTED CHARGES

(1) The Court charges you that you cannot find the Defendant guilty unless you find from the evidence beyond a reasonable doubt that he refused to answer the question or questions set forth in the indictment, and that such question or questions, being pertinent to the question under inquiry by the Committee therein described as the Court has charged you, that such pertinency was made known with reasonable certainty to the Defendant at the time.

(2) The Court charges you that to be pertinent to a question under inquiry within the meaning of the law and the charges in the indictment, the questions asked must be have been known by the Defendant at the time of the Committee's hearings in Atlanta to have had a reasonable relation to some the subjects of legislative inquiry, allegedly under inquiry as as to which the Congress of the United States has power to legislate and the Committee asking the questions has power to investigate must have had power set forth in the Bill of Particulars.

(3) The Court charges you that under the First amendment to the Constitution of the United States, it is provided that "Congress shall make no law—abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances", and any inquiry undertaken by

any Committee of the Congress, or either house thereof, looking to the making of any such law is a void inquiry, [fol. 19] and no question asked in such inquiry is pertinent to a question properly under inquiry, and if on its face a question propounded to the witness falls within such prohibited area of inquiry, he is not punishable for refusal to answer it unless it is then and there made known to him as a reasonable man that facts and circumstances exist rendering it pertinent notwithstanding such constitutional prohibition.

John M. Coe, Attorney for Defendant; Leonard B. Boudin, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

Proceedings before the Honorable William Boyd Sloan, Judge, at Atlanta, Georgia.

Transcript of Proceedings—January 22, 1959

APPEARANCES OF COUNSEL:

For the Government: Robert Sparks, Esq.

For the Defendant: John M. Coe, Esq., Leonard Boudin, Esq.

The above-named case having come on for trial by jury, jurors were qualified, jury duly impaneled, sworn, witness sworn, rule was invoked.

The Court: All right, Mr. Sparks.
[fol. 20]

STATEMENT OF COUNSEL FOR PLAINTIFF

Mr. Sparks: If Your Honor please, gentlemen, my name is Bob Sparks. I am Assistant U. S. Attorney here in Atlanta. My home is in Greenville, Georgia, about 60 miles south from here down in Merriwether county. I state that by way of introduction for those of you whom I may not know.

I am going to be presenting the case for the government assisted by Mr. Ralph Ivey, Assistant U. S. Attorney from Rome, Georgia, and perhaps Mr. John Stokes who is also Assistant U. S. Attorney from Atlanta.

This case involves an indictment against Carl Braden in six counts. I want to tell you just briefly what the government expects to prove in this case. My statement to you is no evidence and should not be construed as evidence by you. It is merely a statement of what I expect to prove and if I do not prove it or fail in any particular respect, of course, you will disregard anything that I say. We expect to show that on July 30, 1958 in the Atlanta Division of the Northern District of Georgia, in fact, in this very Courthouse building here, that a subcommittee of the Committee on Un-American Activities of the House of Representatives of the United States Congress was conducting hearings on the subject, the extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activity in the South, and the entry and dissemination in the United States of foreign Communist Party propaganda.

We expect to show that the defendant, Carl Braden, appeared as a witness before that sub-committee here in Atlanta [fol. 21] and was asked six questions which were pertinent to the question under inquiry which I have just recited to you, and that he did on six different occasions in answer to six different questions refused to answer those pertinent questions.

These questions are:

"And did you participate in a meeting here at that time?" That refers to a meeting in Atlanta, Georgia at the Red Cross Building in 1957, if my memory is correct.

Count Two: "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" That question, if my memory is correct, relates to the same meeting here in Atlanta as to who procured the quarters for this meeting of the Southern Conference Educational Fund which did hold a meeting here in the Red Cross Building in Atlanta.

Count Three: "Are you connected with the Emergency Civil Liberties Committee?"

Count Four: "Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop

plans and strategies outlining work schedules for the Civil Liberties Committee?" That question refers to a meeting between the defendant and Mr. Harvey O'Connor, one Harvey O'Connor, in Rhode Island of which there will be further evidence.

Count Five: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" That letter referred to, we expect to show is a letter signed [fol. 22] Carl and Ann Braden, addressed to "Dear Friend", circulated or purportedly circulated protesting against various activities. This letter "Dear Friend", we expect to show was signed Carl and Ann Braden, Field Secretaries, is a letter which purportedly was circulated opposing several laws which were pending, proposed legislation pending in Congress relative to the state sedition laws.

Count Six: "I would just like to you whether or not, you being a resident of Louisville, Kentucky, have anything to do with the Southern Newsletter?" The pertinency of that will be brought out during this hearing.

Gentlemen, a case like this, which is a very rare type of case to be tried in Georgia, there are certain points in the trial which, by rule of law which have been handed down by the Appellate Courts, the government will have to ask that the jury be excused from the Courtroom while certain evidence is introduced in your absence. Now, that is not any desire on the part of the government to conceal any part of the case from you but by law certain questions are matters for Judge Sloan to decide, for the Court to decide. Other questions will be submitted for your decision.

Now, we expect to carry the following burden. This is the burden that's on the government so far as the questions which you will have to decide in this case in determining the guilt or innocence of Carl Braden. We have to show that he did refuse to answer the six questions. We would have to show that that act took place in the Atlanta Division of the Northern District of Georgia. We will have to [fol. 23] show that it was a wilful refusal, not a refusal caused by a mistake on his part, a misunderstanding of the question or a misunderstanding of the fact that he had been

ordered to answer the question. Then we must show, if we show those three things, we must show that the pertinency of that question was made sufficiently clear to him.

By pertinency, of course, we mean relevance to the matter that the congressional subcommittee was investigating here, that it was made sufficiently clear to him that he or a reasonable man in his circumstances knew or should have known that the question was pertinent. Whether the question was pertinent or not is not a question for your consideration. That is a question which will be determined by the Court. The actual pertinency of the questions will be decided by the Court. Your task in relation to pertinency will be to decide whether the witness knew or should have known whether the questions were pertinent when he refused to answer them.

Finally we must show that a quorum of the committee was present at all times, that is, at all times during his testimony. I anticipate no trouble there because the defense and the government have stipulated that a quorum was present, so you will not be concerned with the quorum question. You still have to find it is a fact, but I don't think there will be any dispute as to the fact that there was a quorum present at all times.

We expect to show that he appeared here in Atlanta accompanied by counsel, one of my distinguished opponents, Mr. John M. Coe from Pensacola, Florida was present with him at the hearing and also representing him at this trial.

[fol. 24]. We expect to show that he started off answering the questions of the committee relatively freely when they were about insignificant matters, but when certain fields or certain questions were reached he declined to answer on the ground that the questions were not pertinent and invoking the protection of the First Amendment to the United States Constitution.

We expect to show that the pertinency of these questions was explained to him both by Mr. Arens, the staff director of the committee, and in some part by other members of the committee.

We expect to show that he was firmly and fully directed to answer the questions and stated that he knew that he had been directed to answer the questions.

And then we expect to show that he wilfully refused to answer these questions.

If we carry that burden, the government will insist that a verdict of guilty be returned on all six counts.

STATEMENT OF COUNSEL FOR DEFENDANT

Mr. Coe: If the Court please, and you gentlemen, I am John Coe from Pensacola and my associate is Leonard Boudin from New York. We are representing Mr. Braden in this case against him.

The case has been fairly stated by counsel for the government. We do not expect to interpose any technical defenses. The committee of the Congress was constituted, the subcommittee was duly constituted and they were sent into the State of Georgia pursuant to a resolution for the purpose of making the investigation which he has stated. They called Mr. Braden before them and Mr. Braden answered fairly and courteously the questions which were propounded [fol. 25] to him until those questions entered an area which he took to be protected by the First Amendment. That is to say, the provisions of the Constitution which secures a man's freedom of speech, freedom of write, freedom of the press and freedom to petition the government.

As the counsel for the government has properly stated, the question of whether or not those questions were pertinent to the subject matter under inquiry has been ruled to be a question of law for the Court. But whether or not the defendant Carl Braden at the time he refused to answer those questions knew that they were pertinent to the subject matter under inquiry is a question of fact which will be submitted by the Court to you gentlemen. Whether or not the refusal of Carl Braden to answer the questions was a wilful refusal will likewise be submitted to you gentlemen. So the ultimate decision upon the questions of fact in this case will be the duty and the responsibility of this jury. Those questions we will submit to you and they will relate to each and every count of the indictment. The indictment

charges this defendant with six separate and distinct offenses. The first question which is asserted he knew was pertinent to the subject matter of the inquiry and which he contends he did not know was pertinent to the subject matter of the inquiry was the question: "And did you participate in a meeting here at that time?" The context of his testimony which will be presented to you will show that that was a meeting of the Southern Conference Educational Fund, an organization working for integration in the South, and that it met at the Red Cross Building in Atlanta. It is our belief that he did not know that that question was pertinent to the subject matter of the inquiry. However, we must defer to the ruling of the Court when it is made.

[fol. 26] The second question which they claim was pertinent: "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" In other words, the Committee of the United States came down here and wanted to know who solicited the Red Cross Building. He did not know that that was pertinent to the subject matter of the inquiry.

"Was he connected with the Emergency Civil Liberties Committee?" We take the same position in reference to that.

"Did you and Harvey O'Connor in the course of your conferences there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" We do not think that there will be any evidence that the Emergency Civil Liberties Committee was a group of dynamiters or thugs or evil doers of any sort. We do not believe that the Emergency Civil Liberties Committee is anything except that which its name implies. We think that Carl Braden did not know that that was pertinent to any subject matter that the sovereign power was justified in inquiring about.

"Were you a member of the Communist Party the instant you affixed your signature to that letter?" Gentlemen, the inquiry as to whether or not he was a member of the Communist Party may have been pertinent to the subject matter under inquiry and under ordinary circumstances he might have understood that it was pertinent, but the par-

ticular question was involved in the right to petition Congress and the Communist Party or anybody else has a right to ask Congress to do something. Congress doesn't have the obligation to do it, but the first amendment secures [fol. 27] the right of people peacefully to assemble and petition their government for a redress of grievances. The letter to which that question relates is in the record and will be read to you and presented as a part of the government's evidence. That letter was a letter addressed to a considerable group of people throughout the South requesting that they contact their representatives in Congress and ask them to oppose the various bills which were opposed to curtail the jurisdiction of the Supreme Court. In other words, this letter that is supposed to be pertinent into an inquiry into subversion was a petition, or the first step toward presenting a petition to the Congress of the United States asking it to support the jurisdiction of the Greatest Court in the United States.

We submit, gentlemen, that Carl Braden did not know that that was pertinent to the subject matter under inquiry.

The last question, "I would like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?" What the Southern Newsletter is, I do not know. I don't think there will be any evidence as to what the Southern Newsletter is except that it will appear in the record that somebody said that the man who issued it was a member of the Communist Party. However, whether it was part of his utterances as a Communist or whether it was some enterprise like the Kiplinger Letter or some other letter, I do not know and I do not think you will be informed. The first amendment to the Constitution of the United States secures liberty of the press as well as speech. Liberty of the press applies not only to great papers like the New York Times and the Atlanta Constitution, but it applies to the [fol. 28] most insignificant sheet that a man wants to put out to propagate truth or untruth or crack-pot ideas or anything else because it is a basic principle of the government of the United States that a sound public opinion can—

Mr. Sparks: I believe counsel is arguing his case rather than stating what the defense is, that he intends to reply upon.

The Court: It's a little hard to draw the line. I will let him proceed. Go ahead.

Mr. Coe: A sound public opinion, gentlemen, is the base from which the democratic government arises and Carl Braden thought, perhaps the Court will rule that he mistakenly thought, that that freedom of the press included the smallest newsletter as well as the great metropolitan dailies.

Gentlemen, Carl Braden is not a lawyer. He is a layman who has been a newspaperman. He is an ordinary average person. He has stated his employment as being an employee of the Southern Conference Educational Fund working for integration in the South. He has specified what his previous employment and duties have been. In light of the fact that he was not a lawyer, in the light of the fact that he was called before the committee and responded to the committee with courtesy and dignity, in the light of the fact that he stood honestly in the defense of the Constitutional Rights, we will ask you gentlemen to find that he was not in contempt of the committee and he did not wilfully refuse to obey its command.

[fol. 29] The Court: We will suspend the trial of this case temporarily and receive the verdict in another case. I will ask the jury to retire to the corridor.

(The jury retired to the corridor.)

Mr. Sparks: Before the jury is called back in, defense counsel then the government have entered into a number of stipulations designed to shorten the trial of the case. Yesterday afternoon Mr. John Coe and Mr. Leonard Boudin and I examined each of these exhibits which the government has and we reached some stipulations with reference to them. If I am incorrect in any way, I want counsel to correct me because I have rather rough notes here. It is my understanding that the accuracy and authenticity of all the documents was stipulated.

RICHARD ARENS, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sparks:

Q. What is your name, please, sir?

A. My name is Richard Arens.

Q. And your occupation?

A. Staff Director of the House Un-American Activities Committee of the Congress.

Q. And your home is in Washington, D. C.?

[fol. 30] A. A suburb of Washington, yes.

Q. Did you occupy that same position as staff director last July 29, 30, 31, 1958?

A. Yes, sir.

Q. How long have you been with the committee, sir?

A. Approximately two and a half years.

Q. And before that, had you served with any other committees in Washington?

A. Yes, sir. Immediately prior to my assumption of my present place with the Committee on Un-American Activities; I was Staff Director of the Senate Immigration Subcommittee and also a Staff Director of the Senate Internal Security Subcommittee.

Q. Are you an attorney, sir, and what bars have you been admitted to?

A. I am. I was admitted to the Bar of Missouri, the Bar of the District of Columbia, admitted to practice in the Federal Courts, including the Supreme Court.

Mr. Sparks: If it please the Court, I should state at this time, I think, that actually and officially for the record that defense counsel and the prosecution have agreed that the question of a quorum will not be raised, that they stipulated that a quorum was present not only at the time the committee was holding its meetings here in Atlanta, but at all times referred to in the exhibit.

That's correct, is it not, Mr. Coe?

Mr. Coe: That's correct.

[fol. 31] The Court: I will instruct the jury that where counsel for the government and counsel for the defense

make such stipulations, you may accept those stipulations as true without further proof and matters so stipulated will be accepted by the jury.

By Mr. Sparks:

Q. Now, as staff director, sir, what are your duties?

A. The duties of staff director are, in general, to supervise the activities of the staff in the investigations, to handle the preparation or supervise the preparation of the reports of the committee, to direct the clerical force of the committee, to participate in the hearings of the committee, and miscellaneous activities all under the general supervision of the committee and under particular supervision of the chairman of the committee.

Q. State whether or not you then have access to all the committee has access to?

A. Yes, sir.

Q. State whether or not that information actually comes to you before the committee gets it.

A. Yes, I confer with the committee from time to time and most every day with the chairman of the committee, at which times we discuss the affairs of the committee and the information available to the committee and the like.

Q. Now, I will ask you, Mr. Arens, were you present in Atlanta on July 29, 30 and 31 of 1958?

A. Yes, sir.

Q. What was the occasion of your being here on those dates?

[fol. 32] A. The occasion was an investigation and hearing conducted here by a subcommittee of the Committee on Un-American Activities.

Q. Where was that hearing held, sir?

A. It was held in this building here, in the Courthouse.

Q. It was here in Atlanta, Georgia?

A. Yes, sir.

Q. I will direct your attention specifically to the date of July 30, 1958, and I will ask you whether or not a witness named Carl Braden appeared before the committee?

A. He did, yes, in response to a subpoena.

Q. Who was conducting the investigation, the interrogation, Mr. Arens?

A. I was.

Q. Do you see Mr. Carl Braden in the Courtroom at this time?

A. Yes, sir.

Q. Point him out, please, sir.

A. He is seated to the extreme left of the counsel table, to the left in the presence of two counsel. He wears what appears to be horn-rimmed glasses, a man of grey glasses, a man of grey hair, medium height. He is to the right of counsel who is at the center of the table.

Q. In other words, he is at the far end of the table?

A. That's correct, yes.

Q. I hand you U. S. Exhibit No. 9, sir, in case you need it to refresh your recollection and I will ask you, did you direct this question to the defendant Carl Braden "and did you participate in a meeting here at that time?"

A. Yes, sir.

Q. Did he answer the question?

[fol. 33] A. No, sir.

Q. Did you direct the question to him as follows: Who solicited the quarters to be made available to the Southern Conference Educational Fund?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you direct the question to him as follows: "Are you connected with the Emergency Civil Liberties Committee?"

A. Yes.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him the question: Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him a question as follows: Were you a member of the Communist Party the instant you affixed your signature to that letter?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

Q. Did you ask him this question: I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern News Letter?

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

[fol. 34] Q. I will ask you, sir, whether or not you made any explanation to him at the beginning or near the beginning of his testimony as to the pertinency of the questions which you intended to direct to him?

A. Yes, I did.

Q. Did the chairman direct him to answer the questions?

A. Yes, sir.

Q. I direct your attention and ask you to refresh your recollection to the bottom of Page 14, U. S. Exhibit No. 9, and I will ask you, did you explain to him that the explanation of pertinency which you had given him earlier in the hearing carried over with reference to the principal questions to be asked?

A. Yes, sir.

Q. Did he indicate his understanding of it?

A. Yes, sir.

Q. Now, I will ask you also whether the chairman in your presence, to refresh your recollection, on Page 15, midway of the page, did the chairman, Mr. Willis, in your presence instruct Mr. Braden or inform Mr. Braden that the committee disagreed with his position and was insisting on the pertinency?

A. Yes, sir.

Q. Did Mr. Braden or not indicate that he understood that he was being directed to answer every question?

A. Yes, sir.

Mr. Sparks: I believe the jury can be excused at this point, Your Honor.

[fol. 35] The Court: All right, sir. Ask the jury to retire to the corridor.

(The jury retired to the corridor.)

By Mr. Sparks:

Q. Mr. Arens, I will ask you what was the purpose of this inquiry which was being conducted by the subcommittee here in Atlanta to which the questions were pertinent in your opinion and the opinion of the committee?

Mr. Coe: Now, if it please the Court, this is an organization that keeps minutes just like a corporate Board of Directors or like a Court. The purpose of this investigation is embalmed in the record and several resolutions and explanations of the chairman. I submit that the record is the best evidence of what transpired at this hearing and neither the purpose thereof or the details is proper to come from this witness.

The Court: What do you say, Mr. Sparks?

Mr. Sparks: Your Honor, the defense filed a motion for a bill of particulars as to what the subject matter under inquiry was and I am trying to prove what's in my bill of particulars.

The Court: But he only objected to it that there is a higher evidence.

[fol. 36] Mr. Sparks: If it please the Court, I think that if this witness knows within his own knowledge what the purpose of the inquiry was, that he certainly can so state.

The Court: Well, have you introduced in evidence the action of the committee in calling the Atlanta meeting?

Mr. Sparks: Yes, sir.

The Court: Does that state the purposes of the meeting?

Mr. Sparks: Yes, sir, it states the purpose.

The Court: Well, if this witness undertook to testify to a different purpose, do you contend that that would be admissible here?

Mr. Sparks: I will withdraw the question.

The Court: I think the objection is good.

By Mr. Sparks:

Q. What was the legislative purpose of the committee in holding these hearings here in Atlanta, if you know?

[fol. 37] Mr. Coe: Same objection, Your Honor.

The Court: What was the legislative purpose? How can this witness testify except from the official action of the committee itself what this purpose was?

Mr. Sparks: He can testify from his conversations with the committee, his staff work with the committee and his preparation of interrogation for these particular hearings.

The Court: Perhaps as to what they said, and then let the trial of the facts decide what they meant. If he undertakes to testify their purpose, as such, then he is going into either their official actions which is evidenced by their resolutions or what was in their minds. I think the objection is good. Sustained.

By Mr. Sparks:

Q. I will ask you, Mr. Arens, what information were you seeking on behalf of the committee with reference to what proposed legislation or actual legislation was pending?

Mr. Coe: We wish to make the same objection. It still goes to the purpose of the committee.

The Court: That question doesn't go to the purpose of the committee.

[fol. 58] Mr. Coe: If I understand the rule correctly, the information that the committee had was, the undisclosed purpose in the minds of the committee, was different perhaps from that which was disclosed from its formal action?

The Court: He didn't ask him about the purpose of the committee. He asked the witness what this witness was, as counsel for the committee, was trying to develop for the committee by that question. That is something in his mind so that he would know. I don't think that is subject to the objection made. The objection is overruled.

By Mr. Sparks:

Q. Will you answer the question, please? What information were you seeking to present to the committee as staff director in the Atlanta hearings?

A. I was seeking to—do you mean from this witness or from the whole hearings?

Q. From the whole hearings.

A. In the Atlanta hearings we sought to develop factual material respecting communist operations in the Southland, communist propaganda, communist techniques, communist infiltration, all for the purpose of having a fund of information with which the committee could appraise legislative proposals then pending before the committee either in the form of bills or in the form of suggestions and for the purpose of enabling the committee to fulfill its duty under the Legislative Reorganization Act of maintaining a continued surveillance over the administration and operation of the then existing Internal Securities Laws. [fol. 39] Q. What information were you seeking to present to the committee with reference to any particular amendment to any particular act or changes to any particular act?

A. One of the proposals which was then pending before the committee was in the form of a bill known as H.R. 9937 which, among other things, contained provisions undertaking to meet issues created by the Dates case, namely, the construction or interpretation of the word "organizing." If you want me to, I can give you a little further explanation of that, what was meant by organizing within the framework of the Smith Act.

Q. What about the Foreign Agents Registration Act?

A. Well, within the purview of H. R. 9937 there were provisions which would have amended the Foreign Agents Registration Act. It would have amended the Smith Act. It would have amended the Immigration and Nationality Act. It would have amended a number of acts, the Internal Security Act being the principal, and it would have amended by that bill in a number of particulars all dealing with communistic activities, communistic techniques, communistic dissemination of propaganda.

Q. I will ask you to just briefly summarize, if you will, the testimony which the committee received, if they did receive any from Armando Penha on July 29, 1958 here in Atlanta, Georgia?

Mr. Coe: There has already been entered in the record the complete record including Mr. Penha's testimony. I submit that is the best evidence.

[fol. 40] Mr. Sparks: I am trying to summarize it for the benefit of the Court. I don't know whether the Court has had time to read his testimony which is rather lengthy.

The Court: The objection is well taken.

Mr. Sparks: Very well.

By Mr. Sparks:

Q. I will ask you, sir, at the time that Mr. Braden was subpoenaed to appear as a witness on July 30, 1958 in Atlanta, Georgia, what information did you have about Mr. Braden which prompted you to subpoena him to appear as a witness?

Mr. Coe: I object to that as being hearsay, and, secondarily, the government has no more right to attempt to prejudice the Court than it would the jury by showing prior alleged misconduct.

The Court: One of the exceptions to the hearsay rule is that it may be shown to explain conduct. The question asked here was what was his purpose and what information he had that influenced him in calling Mr. Braden. That is, as I understand it, to show the information that he acted upon. Whether it was correct or incorrect is not proof of the information that he had. It is not proof of the facts contained in the information. It is simply an explanation of his conduct and not subject to the objection you made. Your objection is overruled.

By Mr. Sparks:

Q. Will you answer the question, please? What information did you have concerning Mr. Carl Braden, the defendant on trial, which prompted the subpoena to be issued?

A. First of all it was our information that Mr. Braden was a member of the Communist Party, that he was engaged as a communist with an organization known as the Southern Conference Educational Fund which was the subject of investigation by the Internal Security Subcommittee which found in essence that the Southern Conference Educational Fund was for all intents and purposes the

successor organization to the Southern Conference for Human Welfare which had been cited as a communist front. We had the information that Mr. Braden was a field representative for the Southern Conference Educational Fund. In that capacity he was going over the Southland covering a number of states setting up meetings, disseminating communist propaganda, doing communist work in the South. It was also our information that Mr. Braden was a contributor, a writer for a publication circulating in the South under communist auspices, known as the Southern News Letter, the driving or leading persons of which were known communists. It was our information that Mr. Braden had in the period of time, a short time prior to the time he was actually subpoenaed or a subpoena was issued for his appearance, had left Louisville, Kentucky, which was his home, had then been on a tour in furtherance of Communist Party objectives at the behest and direction of the Communist Party. He had been there in Atlanta and he had been to New Orleans and that he was then enroute to confer with another communist by the name of Harvey O'Connor who was a leading figure and is now a leading figure in another organization controlled by the conspiracy known as the Emergency Civil Liberties Committee. That conference was scheduled to take place and did take place some place in Rhode Island. There are other collateral and incidental factual items which we had, but I have given you the highlights.

The Court: The Court receives that evidence as explanation of the actions of Mr. Arens in subpoenaing that defendant, Mr. Carl Braden, as a witness and not as proof of the facts contained in the information that he stated he had upon which he acted.

By Mr. Sparks:

Q. Did you have any information relative to any specific letter or letters which Mr. Braden was circulating or purported to have circulated?

A. Yes, sir.

Q. Will you tell us about that, please, sir?

A. My recollection could well be refreshed by the record itself, but in essence it was at least one of the letters, one

of the letters was a letter signed by Mr. Braden and another person urging congressional action of some kind. My recollection isn't too vivid on the exact contents of it, but one of the letters that I have in mind on that appears in the record some place. In addition to that, within this record it appears on page 18 of the record of United [fol. 43] States Exhibit No. 9. In addition to that it was our information that Mr. Braden, and again my recollection is not absolutely clear, but it is in general that he had something to do with the preparation and dissemination of petitions which were circulated in the Southland for the purpose of precluding or attempting to preclude or softening the very hearings which we proposed to have here.

Mr. Coe: I object to that particularly to the testimony as to the petitions on the ground that that is an activity protected by the first amendment to the constitution and it can have no relevancy as a reason for execution of the investigation.

The Witness: His activity in that regard was as a communist, under communist discipline and direction.

Mr. Coe: To continue our objection, even a communist has a constitutional right to petition the government and it cannot be regarded as a crime.

The Court: Doesn't that go to the weight and effect of it rather than its admissibility?

Mr. Coe: The view I take, the protection of the first amendment is absolute.

[fol. 44] The Court: Wouldn't the letter, if it shows what he contends it shows, be itself the basis of your objection rather than the admissibility of it?

Mr. Coe: The theory of my objection is this: It is attempting to show that by reason of this knowledge the government was justified in making an investigation. I don't think the government is justified under any circumstances in making an investigation of the exercise of the right to petition whether done by a communist or burglar or whatnot.

The Court: Perhaps you don't understand. I think that really that it is admissible even though it may show, if it

does show what you contend, that the government was acting in a field that it had no right to act, in that it undertook to deal with activities protected by the first amendment, that it would, therefore, be admissible in evidence to show, even though it did show that the committee acted improperly. Now, you are objecting to it being received in evidence as a motivating factor upon which the committee acted which, if excluded, would not give the Court the right to even consider the objection you offer. I think that what you are actually doing is to say that this piece of evidence shows, if the committee acted improperly in that they were undertaking to investigate a field that is protected by the first amendment, then I think that goes to the effect of it rather than to its admissibility. [fol. 45] Mr. Coe: I understand. I will defer to Your Honor's ruling. It may do more good than harm.

By Mr. Sparks:

Q. What was your information, sir, relative to the matters concerned in the petitions you just testified about? What do they relate to?

A. It was our information that these petitions were circulated by communists as communists under communist direction and that in the process of the circulation and the procurement of the petitions, the communists were practicing a communist technique which the committee wanted information on. They were not interested in whether or not they were petitions, but our interest in presenting it to the committee was the communistic technique in failing to disclose that the solicitation of the commission was by people under communist discipline. Q

Q. I will ask you, sir, whether or not you had any information relative to the identification of Braden as a communist?

A. Yes, sir. It was my information that he had been identified as a communist.

Q. Did you have any information relative to his presence in Atlanta in December of the preceding year, 1957?

A. Yes, sir, it was my information that as a communist he in concert with at least one other person who was a communist had been in Atlanta in December of the pre-

ceding year at which time he was engaging in communist activities, part of which was to penetrate known communist organizations which was then a technique that we were undertaking to gain information about.

[fol. 46] Q. In your capacity with the committee, what information did you have relative to Mr. James A. Dombrowski, if any?

A. It was the information of the committee that Mr. Dombrowski was the chief officer of the Southern Conference Educational Fund of which Mr. Braden was a staff representative or field representative.

Q. You made reference to Mr. Harvey O'Connor. I will ask you whether or not you in your capacity with the committee had any information relative to Mr. O'Connor as to whether he was or was not a communist?

A. Yes, sir, it was our information that he was a communist, a member of the Communist Party and in that capacity he served as the principal officer of the Emergency Civil Liberties Committee.

Q. What information did you have about the activities or the function of the Southern News Letter?

A. It was our information that the Southern News Letter was communist controlled, that the man who had the principal office in it, whether he was the editor or publisher, I don't know, a man by the name of Eugene Feldman, was a communist identified repeatedly as a communist, that Mr. Braden as a communist was a participant in the affairs of the Southern News Letter and we suspected, although we did not know, that Mr. Braden in addition to contributing to the Southern News Letter had something to do with the distribution of the Southern News Letter because there was a post office box number in Louisville where Mr. Braden lived to which the Southern News Letters were sent and from which we suspected they were redistributed, that one of the things that we wanted to elicit and attempted to elicit from Mr. Braden was his [fol. 47] participation in that particular enterprise.

The Court: We will suspend at this time for 15 minutes.

(Recess had.)

By Mr. Sparks:

Q. I believe when we recessed, Mr. Arens, you were testifying in connection with the Southern News Letter. I will ask you what your information was prior to this hearing with reference to the type of material carried by the Southern News Letter?

A. Basically communist propaganda.

Q. Now, I will show you a copy of the indictment and I will ask you to take the questions beginning with Count 1 down through Count 6 and state what information you were attempting to elicit by each of those questions?

A. Question 1—I will read it: "And did you participate in a meeting here at that time?" We were attempting to elicit from Mr. Braden information respecting his participation as a communist in a meeting here in Atlanta for the purpose of developing information about the technique of communists in penetrating groups and organizations on behalf of the communist party. One of the things we had in mind to attempt to develop would be factual material which could be used by the committee in its appraisal of legislation then pending on redefining certain activities which might be encompassed within legislative mandates, such as the Smith Act.

The second question: "Who solicited the quarters to be made available to the Southern Conference Educational [fol. 48] Fund?" That question tied in with the preceding questions in the course of the hearings which we were attempting to determine whether or not certain quarters had been solicited by a person who was a communist in order to develop factual information on technique which is a pattern of communist operation of soliciting non-communist facilities for the purpose of disguising the true identity of the promoters of a group and, that again, had the information been forthcoming it would have been helpful to the committee in the appraisal not only of existing legislation, the existing legislation and its administration and operation, but in assisting the committee in appraisal of proposals then pending before the committee legislative-wise.

The next question: "Are you connected with the Emergency Civil Liberties Committee?" The information which was sought to be obtained there was any connection which this particular witness who had been identified as a communist may have had with an organization which itself had been found by the Senate Internal Security Subcommittee to be a communist front, more particularly, we were concerned with developing this information because it was suggested to the committee and was our information that this witness had been in recent conference with the head of the Emergency Civil Liberties Committee who himself was a communist, identified as a communist. This information, had it been forthcoming, would have added to the fund of knowledge of the committee itself, our committee, the committee on Un-American Activities in appraising the function and activity of the Emergency Civil Liberties Committee and determining whether or not our committee, had it been forthcoming, plus other information [fol. 49] which we then had, might be sufficient quantity of information for the committee to itself cite the Emergency Civil Liberties Committee.

The next question: "Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" As I have already indicated, our committee, the Un-American Activities Committee, had a deep concern over the activities of the Emergency Civil Liberties Committee, its functions across the country. We were trying to elicit here information as to what may have developed between two persons who had been identified as communists respecting plans and strategies of an organization which itself has been engaging in dissemination of communist propaganda and which according to the findings of the Senate Internal Security Subcommittee is itself a communist front. All this information, had it been forthcoming, would have added appreciably to the fund of knowledge of the committee in its appraisal of legislative proposals then pending and in the administration of the Internal Security Act which has provisions for citation of organizations as communist fronts, and I am not presently aware of any out-

standing citation by the subversive activity control board of the Emergency Civil Liberties Committee. So that would have been very vital information from our standpoint had it been available to us.

The next question: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" I have previously on this record alluded to a letter which was sent by the defendant in this proceeding and another person to a number of persons respecting legislative activity. It was of deep concern to [fol. 50] this committee to determine not whether or not the letters were sent, because everyone has a right to send letters, not to determine whether or not petitions were being sent to the Congress, but to determine what were the techniques involved by the Communist Party in procuring signatures and in disseminating the Communist Party line at the behest of the conspiratorial operation in the country. Again it would have been, in my judgment, valuable information for the committee to obtain, again for the purpose of appraising communist party techniques in its operation in the United States.

Question 6: "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with there the Southern Newsletter?" As I have previously indicated on this record, it was the information of the committee that this particular witness had been a writer of articles or columns or something of the kind that appeared in the Southern Newsletter. It was also the information of the committee, and we were not too certain about what the facts were, that the Southern Newsletter was being channeled from Chicago to Louisville, Kentucky, where the defendant lived, on out through Southland, that there was a lockbox or a post office box, I should say, in Louisville. We were trying to develop from this witness information as to his connections with the Southern Newsletter, all for the purpose of developing factual material respecting a publication which we knew was Communist controlled and which was disseminating Communist propaganda for the purpose of enabling the committee to have additional fund of factual material which

it could appraise pending proposals, which it could appraise [fol. 51] administration and operation of the then existing internal security legislation on the statute books.

Q. Now, did you have any information of any other person who would be likely to give you the information that you were seeking from Mr. Carl Braden with reference to these matters?

A. No, sir.

Mr. Sparks: That concludes my examination of the witness, Your Honor. I don't know whether counsel wishes to examine him outside of the jury.

Mr. Coe: Yes, sir.

Cross examination.

By Mr. Coe:

Q. Will you describe the format of the Southern Newsletter? That is, what was its physical composition?

A. I believe we have a copy. I'm uncertain whether the copy was introduced into the record. My best recollection is at the moment, and it is not too clear, that the Southern Newsletter appeared to be a publication where you, not like a paper, where you open it up, you open it up as you would a leaflet, a pamphlet.

Q. In other words, it was in the form such as a mimeographed newsletter would come out?

A. Yes, sir, that's best of my recollection. But I want to make it clear that in the course of my work from day to day I see such a volume of material and I have had my attention directed to so many different activities that, [fol. 52] realizing that I am under oath, I don't want to be too precise as to my recollection. It is vague. But I recall seeing at least a few copies of the newsletter in which it appeared to be about the size of a good size letterhead, not the size of a newspaper.

Q. In other words, it was a press organ, is that correct?

A. I beg your pardon?

Q. It was a press organ, whether the Communist Party organized it, it was a press organ? That was something made for general distribution among people or a group of people?

A. That's correct, yes.

Q. Did I understand you correctly to say that one of your inquiries as to the Emergency Civil Liberties Committee was with a view to citing it?

A. I would say that would be—not necessarily with a view to citing it; a view to determine whether or not the Committee on Un-American Activities would or should cite it. It has been cited by the Senate Internal Security Subcommittee. Our particular committee has not cited it as yet.

Q. In other words, you contemplated the possibility of citing the Emergency Civil Liberties Committee by your committee?

A. That's correct, yes.

Q. Now, did you have knowledge of the fact that Harvey O'Connor was a writer?

A. Yes, sir.

Q. Wrote quite a number of books generally published?

A. I cannot at the moment testify with respect to any particular book that he has written, no.

[fol. 53] Q. Well, you understand that he is a writer of books which have been published in the United States, is that not true?

A. In the vaguest sort of way I am under the impression that he was an author. I am not familiar with any particular works of Mr. O'Connor.

Q. Now, with reference to the Southern Conference Educational Fund, did you or did you not have information that it devoted a large portion of its energy to the development of the integration movement?

A. I think that is substantially correct, that it did participate in the integration movement, yes.

Q. Did you not likewise know that Carl Braden was an employee of that organization and devoted a large portion of his energies to the integration movement?

A. That's correct, if we understand what you mean by devoting energies to the integration movement. It was our information then as it is now that the Communist, including Mr. Braden as a Communist, were using the integration movement as a facade for Communist Party purposes. If you say integration movement and carry with

it a proper motive, I cannot accept your terminology. But if you say the Southern Conference Educational Fund was at least ostensibly promoting the integration movement, I would have to agree with you.

Q. Irrespective of motive, the actual fact was that a great deal of time and effort in writing was devoted to the development of the integration movement?

A. I think I made my point clear. It has been our experience within this particular instance that Communist [fol. 54] use any movement that they can possibly wangle themselves into for the purpose of agitation and propaganda and for the purpose of the ultimate objectives of the conspiracy and not for the purpose which it was set up.

Q. Even if they did for the purpose of going and blowing up bridges, they talked about integration?

A. Yes, sir, as they talk about peace and so many other things which they used as a facade behind which they could carry on their conspiratorial activities. I was not under the impression at the time nor at the present time that the person whom we are discussing were sincere, properly motivated in their participation in these movements to which you have alluded.

Q. Now Mr. Arens, did I understand you a moment ago to say you had a copy of the Southern Newsletter with you?

A. No, I just said in passing I thought it may have been. I haven't studied this record for some time. It may have been at least by reference incorporated in this record.

Q. The thought I had in mind, if you had one available, I would like to see it.

A. I noticed as I quickly perused the record here a few moments ago when Mr. Sparks handed it to me, there were certain exhibits incorporated in the body of the record. I do not know whether a copy of the Southern Newsletter or the front page of it, we will say, was incorporated.

Q. That's counsel for the government?

A. I think no but I didn't want to make an affirmative assertion along that line without being certain.

[fol. 55] Mr. Coe: Could counsel for the government make such a document available to the witness?

Mr. Sparks: I have never seen a copy of the Southern Newsletter.

Mr. Coe: Neither have I. I have no further questions.

Mr. Sparks: I think the jury may come back in. Those are all the questions I have.

The Court: Very well. Let the jury come back.

(The jury returned to the box.)

Mr. Sparks: You are excused Mr. Arens. May he be excused, Your Honor, permanently?

Mr. Coe: That's agreeable to the defense.

The Court: Very well.

(Witness excused.)

Mr. Sparks: If it please the Court, I wish to read to the jury certain excerpts from U. S. Exhibit 9 which is in evidence, [fol. 56] that portion of it which deals with the testimony of Mr. Carl Braden. I will not read it all. It will go out to the jury but I wish to read certain portions of it.

The Court: Very well.

Mr. Coe: I believe it was our stipulation that either of us might read such portions as we desire.

The Court: That's right, yes.

Mr. Sparks: Gentlemen of the jury, I am going to read two certain excerpts from an exhibit which will be out with you, U. S. Exhibit No. 9 which has been admitted in evidence. I will state that I will read the name of the person asking the question and the name of the person who responds and any comments by the congressmen.

"Mr. Arens: Kindly identify yourself by name, residence, and occupation.

"Mr. Braden: My name is Carl Braden. I live at 4403 Virginia Avenue, in Louisville, Kentucky. I am a worker in the integration movement in the South, being employed by the Southern Conference Educational Fund, Inc., which is southwide interracial organization working to bring [fol. 57] about integration, justice and decency in the South.

"Mr. Arens: Mr. Braden you are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

"Mr. Braden: I am. I was vacationing in Rhode Island when a United States marshal took me off the beach and handed me a subpoena.

"Mr. Arens: And you are represented by counsel?

"Mr. Braden: I am.

"Mr. Arens: Counsel, will you kindly identify yourselves?

"Mr. Tucker: C. Ewbank Tucker of Louisville, Kentucky; Louisville, Kentucky, member of the Kentucky State Bar.

"Mr. Coe: John M. Coe of Pensacola, Florida, member of the Bar of Florida and the Supreme Court of the United States.

"Mr. Arens: In what capacity are you employed, Mr. Braden, with the Southern Conference Educational Fund?

[fol. 58] "Mr. Braden: I am employed as field secretary, and I am also associate editor of their newspaper, the Southern Patriot, which is a paper that disseminates information on integration in the South and about the people who are working for integration.

"Mr. Arens: How long have you been so employed, please, sir?

"Mr. Braden: A year.

"Mr. Arens: And what was your employment immediately prior to your present employment?

"Mr. Braden: I was employed—I was unemployed as a result of harassment and prosecution resulting from my efforts to bring about integration in Louisville, Kentucky."

Mr. Sparks: Now, I will skip down to the bottom of page 7.

"Mr. Arens: Mr. Braden, I understand you to say you were vacationing in Rhode Island when you were served with the subpoena to appear before this committee, is that correct?

"Mr. Braden: That is right, sir.

[fol. 59] "Mr. Arens: With whom were you visiting in Rhode Island?

"Mr. Braden: I was visiting Harvey O'Connor.

"Mr. Arens: Can you tell us, if you please, sir, what his occupation is?

"Mr. Braden: Harvey O'Connor is a writer.

"Mr. Arens: Is he connected with the Emergency Civil Liberties Committee?

"Mr. Braden: He is the chairman of it, the national chairman.

"Mr. Arens: And where did you come from to your point in Rhode Island; where was your immediate point of departure before you arrived in Rhode Island?"

"Mr. Braden: Mr. Arens, I believe this is outside the scope of any possible—this is not pertinent to any possible investigation that the committee might be conducting, and I also believe that it is an invasion of my right to associate under the first amendment, and I therefore decline to answer.

[fol. 60] "Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer; and I should like, for the purpose of the record absolutely clear, to explain to the witness now the pertinency of the question.

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activity sometime ago introduced a bill, H.R. 9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

[fol. 61] "In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security ~~Act~~, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front.

"If you will tell us, sir, now of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the [fol. 62] duties and responsibilities which it has upon it.

"Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

"Mr. Willis: I think, sir, that a sufficient foundation has been laid to make the question completely pertinent, and I direct you to answer the question.

"Mr. Braden: In the first place, Mr. Chairman, Mr. Arens has been grossly misinformed; and it still remains a fact that my beliefs and my associations are none of the business of this committee.

"Mr. Willis: In other words, you are maintaining your attitude of refusing to answer?

"Mr. Braden: On the grounds of the first amendment to the United States Constitution; which protects the right of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly. On that ground I stand, sir.

"While you are investigating, Mr. Arens, you ought to investigate some of the atrocities against the Jews and Negroes in the South, such as the picketing of the Atlanta Journal last Sunday morning."

[fol. 63] Mr. Sparks: I skip over to the top of Page 10, Your Honor. A statement by Mr. Arens to Mr. Braden.

"Mr. Arens: Yes. I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar questions which I am intending to propose to you."

Mr. Sparks: Farther down on Page 10, a statement by Mr. Willis.

"Mr. Willis: Let the Chair understand the situation. And I think that should be made perfectly clear. I think the question of pertinency of these hearings has been completely explained and is a matter of record. Without repetition, you are now on your guard as to why these questions are being propounded to you, all of them; and let that basis be the general basis for the question."

Mr. Sparks: Farther down on Page 10, a statement by Mr. Arens.

"Mr. Arens: And let it be clear, also, sir, that I do not propose, nor have I thus far at any time undertaken, to

[fol. 64] probecany private beliefs. We are interested here solely in your participation in an organization which is controlled by a Godless, atheistic conspiracy, which is sweeping the world and which ultimately threatens, and will threaten, the integrity of this Nation; and if this committee of the United States Congress cannot solicit from a citizen information respecting the operation within the confines of the border of this Godless, atheistic conspiracy, God help this country."

Mr. Sparks: I will move over to Page 14, toward the middle of the page or a little lower.

"Mr. Arens: Now, Mr. Braden, please tell the committee when you were last here in the Atlanta area pursuant to your work..

(The witness conferred with his counsel.)

"Mr. Braden: I am trying to think exactly when it was, sir. The latter part of May.

"Mr. Arens: Of this year?

"Mr. Braden: Yes, sir.

"Mr. Arens: Were you here pursuant to the official assignment which you have as a field organizer or field [fol. 65] secretary, as it were, of the Southern Conference Educational Fund?

"Mr. Braden: Yes, sir. I travel all over the South in the interest of integration.

"Mr. Arens: And where did you hold your meeting here in May?

"Mr. Braden: Did you ask me about a meeting?

"Mr. Arens: Did you have a meeting here in May?

"Mr. Braden: Again I will have to stand on the first amendment on the grounds that this is an invasion of private belief and association; that the question has no possible pertinency to any possible legislative purpose; and that the mandate establishing this committee is too vague for anybody to know what you are investigating.

"Mr. Arens: Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interroga-

tion carries over with reference to each of these principal questions.

"Mr. Braden: That is understood, sir.

[fol. 66] "Mr. Arens: Were you in the Atlanta area in December of 1957?"

"Mr. Braden: I beg your pardon, sir?"

"Mr. Arens: Were you in the Atlanta area in December of 1957?"

"Mr. Braden: Yes.

"Mr. Arens: And did you participate in a meeting here at that time?"

Mr. Sparks: I call the attention of the Court that that is the first count of the indictment.

"Mr. Braden: Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?"

"Mr. Willis: Well, it is understood that you are referring to the first amendment.

"Mr. Braden: The challenging of the pertinency of the question, challenging the mandate of the committee, and my rights under the first amendment.

[fol. 67] "Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do we understand that?"

"Mr. Braden: Yes, I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this."

Mr. Sparks: Now, at the bottom of Page 15.

"Mr. Arens: Now, Mr. Chairman, I should like, notwithstanding the general direction that the explanation of pertinency carries over to the principal questions, to add a brief explanation with reference to the question which I intend to propound in just a moment.

"Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for eight years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a directive to penetrate non-communist organizations, fine, patriotic, humanitarian organizations for the [fol. 68] purpose of worming their way in, to further the communist objectives.

"I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding, you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the Committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization."

Mr. Sparks: Then I will skip over, Your Honor, to Page 17, near the top of the page. This is Count 2 of the indictment.

"Mr. Arens: Excuse me. Who solicited the quarters to be made available to the Southern Conference Educational Fund?"

"Mr. Braden: I will have to stand on my previous refusal to answer on the same grounds, first amendment and so forth.

"Mr. Arens: Did you participate in the session?"

"Mr. Braden: Same grounds.

[fol. 69] "Mr. Arens: The record is clear, is it not, Mr. Chairman and counsel to the witness, that in response to each of these refusals to answer, the Chair has given a direction and there has been an appropriate explanation of the pertinency?"

"I see you nod your head. The reporter cannot get a yes from your nod.

"Mr. Braden: I understand. My counsel and I understand that."

Mr. Sparks: Now, the question embodied in Count 3 is next.

"Mr. Arens: Now, sir, are you connected with the Emergency Civil Liberties Committee?"

"Mr. Braden: Same ground."

"Mr. Willis: You mean you refuse to answer on the same ground?"

"Mr. Braden: Yes, sir. I refuse to answer on the same ground. It being, you know—do we have to go through it each time or will it be understood, sir?"

Mr. Sparks: Then skipping down farther on Page 17 to a statement by Mr. Arens, which is Count 4.

[fol. 70] "Mr. Arens: Now kindly answer the question. Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?"

"Mr. Braden: Same answer on the same grounds, Mr. Chairman; same refusal to answer on the same ground."

"Mr. Arens: Now, in addition to the letter attacking this committee—and we are used to it—by the Southern Conference Educational Fund, have you, as a field representative or field organizer of the Southern Conference Educational Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress?"

"Mr. Braden: I am afraid the question is too vague for an answer, Mr. Chairman."

"Mr. Arens: I will be specific then, sir. I will display, if you please, sir, a photostatic reproduction of a letter on the letterhead of the Southern Conference Educational Fund, signed Carl and Anne Braden, field secretaries."

"Mr. Braden: May we have it read into the record?"

[fol. 71] "Mr. Arens: I am going to display it to you—in which, among other things, the recipient of the letter, "Dear Friend," is asked to write their Senators and Con-

gressmen to oppose S. 654, S. 2646, and H. R. 977, all of which are security measures pending in the United States Congress.

"Kindly tell this committee, while you are under oath, sir, whether or not that photostatic reproduction of that letter is true and correct and valid.

"Mr. Braden: I will have to read it first.

"Dear Friend"—

"Mr. Willis: After you read it—are you going to just read it, or will you answer the question as to whether you signed it or not, if it proves—

"Mr. Braden: It will indicate from the letter that I signed it, I think, I mean whether I did or not. If it is a letter I wrote, it is bound to have my name on it.

"Dear Friend:

"We are writing to you because of your interest in the Kentucky "sedition" cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used [fol. 72] against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target

is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills come up at any time.

"Cordially yours,

Carl and Anne Braden."

The Court: At this time we will adjourn for lunch.

Now, gentlemen of the jury, during the noon adjournment of this Court you will be very careful to obey these instructions. Do not discuss this case among yourselves or with anyone in your presence. Do not accept hospitality from anyone connected with the case or interested in the [fol. 73] result of the case. If anyone undertakes to approach you about the case in any way, you will report that fact to the Court. Do not read or listen to anyone discuss the case in any way. Do not read any article that discusses the case or discusses the subject matter of the prosecution here. Just be very careful to keep yourselves perfectly free from contact with anything relating to this case outside of the Court room.

(A luncheon recess was had.)

Mr. Sparks: If it please the Court, I believe I had just completed reading the letter which ended with the signature of Carl and Anne Braden, Field Secretaries. I am just about through.

"Mr. Arens: Did you sign that letter?

"Mr. Braden: Our signature is on the letter.

"Mr. Arens: Were you a member of the Communist Party the instant you affixed your signature to that letter?"

Mr. Sparks: And that is the question which is contained in Count 5 of the indictment.

"Mr. Braden: I refuse to answer on the same ground previously stated, Mr. Chairman.

[fol. 74] "Mr. Jackson: Mr. Chairman—

"Mr. Arens: Mr. Braden, are you connected in any way with the Southern Newsletter?

"(The witness conferred with his counsel.)

"Mr. Arens: I might explain to you. We had a man who has been identified as a Communist—

"Mr. Braden: Who is that?"

"Mr. Arens: Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the Committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South. I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern Newsletter?"

Mr. Sparks: That is contained in Count 6 of the indictment.

"Mr. Braden: I think you are now invading freedom of the press," Mr. Arens and Mr. Chairman. I object to your [fol. 75] invasion of the freedom of the press, and I also decline to answer the question on the same grounds. You are not only attacking integrationists, you are attacking the press."

Mr. Sparks: And then skipping to the bottom of Page 19, a statement by Mr. Arens.

"Mr. Arens: In view of the distinguished Congressman's observation on the Southern Conference Educational Fund, the organization which has been cited as a communist front with which this man has a connection as an identified communist is the Emergency Civil Liberties Committee. The Southern Conference Educational Fund itself is, for all practical purposes, the successor organization to the Southern Conference for Human Welfare, which itself had been cited as a communist front. The Senate Internal Security Subcommittee ran an investigation of the Southern Conference Educational Fund—and I say in passing that I happen to have been identified with the Internal Security Subcommittee at that time and did the interrogating of the witnesses.

"The report of the Internal Security Subcommittee with reference to the Southern Conference Educational Fund concludes substantially as follows—this is not an exact quotation; it is only from memory—that an objective appraisal from the record compels the conclusion that the Southern Conference Educational Fund is, for all practical purposes, operating under the same leadership and for the same objectives as the Southern Conference for Human Welfare.

[fol: 76] "Mr. Braden: May we have the record show, then, Mr. Chairman, that the Southern Conference Educational Fund was not specifically listed as he said—

"Mr. Jackson: Very well, Mr. Chairman.

"Mr. Braden: Originally.

"Mr. Arens: That is one of the purposes why we wanted to interrogate you, because you are an identified communist by a reliable, responsible witness who placed her liberty on the line and said, "While I was in the Communist Party, I knew him, to a certainty, as a member of the Communist Party conspiracy." That is you. You are now the field representative in this committee. We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing."

Mr. Sparks: And, Your Honor, you requested me to call that to your attention so you could instruct the jury.

The Court: Yes, sir.

Gentlemen of the jury, the paragraph that was last read to you by the United States Attorney is admitted for your consideration for the limited purpose only of considering that statement as having been made to Mr. Braden in determining whether or not Mr. Braden was [fol: 77] sufficiently informed as to the pertinency of the questions asked and you may consider it for that purpose and that purpose only. You will not consider it as proof of the truth of the statements made in that paragraph by Mr. Arens, but simply as statements made to Mr. Braden and you limit that consideration to the determination of the issue as to whether Mr. Braden was properly and ade-

quately informed as to the pertinency of the questions asked.

Mr. Sparks: If it please the Court, I ask the Court to take judicial notice of Volume 60, United States Statutes at Large, 1946, at Page 828 and also at Page 832, Section 136, being the paragraph entitled Legislative Oversight by Standing Committee.

There is only one other matter, I think, that was left dangling and that was with reference to U. S. Exhibit No. 4 where Rule 11 was set out as being introduced and I conferred with defense counsel and they agree that under the Court's ruling as to the transmission of any documents, that they have agreed that it's not necessary for me to specify the exact portions of Rule 11 that I rely upon, but simply call the Court's attention to it.

The Court: I believe that's pages 328 thru 371.

Mr. Sparks: That's right.

The Court: I understand then that the objections made to that particular rule are withdrawn?

[fol. 78] Mr. Coe: That's right.

Mr. Sparks: The government rests.

Mr. Coe: As part of the government's case and in accordance with our stipulation, I wish to read a portion of the government's exhibit.

The Court: Yes, sir.

Mr. Sparks: I so stipulated.

Mr. Coe: I read from Page 7, the middle of the page.

"Mr. Arens: And what was your last principal occupation?

"Mr. Braden: I was a newspaper man, employed as a copy editor by the Louisville Courier-Journal.

"Mr. Arens: How long did that employment endure?

"Mr. Braden: I was employed on two different occasions. You mean my entire newspaper career or—

[fol. 79] "Mr. Arens: Just the highlights, please, sir.

"Mr. Braden: All right. I was a reporter and rewrite man for the Louisville Herald-Post from 1930 to 1936; a reporter and editor for the Cincinnati Inquirer; city editor of the Harlan, Kentucky, Daily Enterprise; labor reporter for the Louisville Times; and then editor for the Courier-

Journal, in addition to being editor of several labor newspapers.

"Mr. Arens: Would you give us now please just a word about your education?"

"Mr. Braden: I studied from 1928 to 1930 for the Catholic priesthood. I might add that I am now a member of the Episcopal Church.

"Mr. Arens: When did you complete your formal education?"

"Mr. Braden: I did not attend school after 1930.

Mr. Coe: I read again from Page 12.

"Mr. Braden: This is an open letter to the United States House of Representatives:

[fol. 80] "We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

"As Negroes residing in Southern States and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

"We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern States. To cite only a few examples, there are bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

"However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as "subversive" any citizen who is inclined to be liberal or an independent thinker.

"For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees,

in trying to attach the "Subversive" label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

"It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our great needs [fol. 81] in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled "subversive" by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

"We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood.

This letter is dated July 22, 1958, which is the day that my subpoena was dated in Washington, D. C., by Congressman Francis Walter. There it is."

Mr. Coe: I read from Page 16, a statement by Mr. Arens, starting at the beginning of the third paragraph.

"I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your [fol. 82] physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

"Mr. Braden: Before we get to that, Mr. Arens, you said that Mr. Penha made some statement there.

"Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question. This record is crystal clear if I ever saw one.

"Mr. Braden: Mr. Chairman, the man made a lot of statements.

"Mr. Arens: I do not think the committee needs to be harassed or haggled with by an identified communist.

"Mr. Willis: Answer the question.

"Mr. Arens: Now, sir, kindly answer the question.

"Mr. Braden: Shall I take these pictures one by one?

"Mr. Arens: Kindly tell us whether or not these pictures are a true and correct reproduction of yourself and your wife entering the American Red Cross Building in December of 1957.

[fol. 83] "Mr. Braden: While we are at it, my wife is not here, so I guess I can identify all of us, let's see. This is a picture of me and James A. Dombrowski, executive secretary of the Southern Conference Educational Fund, and Mrs. Anne Braden, myself and Aubrey W. Williams, publisher of the Southern Farm and Home, who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration."

Mr. Coe: That is all we wish to read.

The Court: I believe the government has rested.

Mr. Sparks: Yes, sir.

Mr. Coe: The defense rests, if it please the Court.

The Court: Very well. Let the jury retire to the corridor, please.

(The jury retired to the corridor.)

Mr. Boudin: We hand you a written motion, Your Honor, upon which I shall argue in support of our motion for a judgment of acquittal. A copy has been given to counsel for the prosecution.

[fol. 84] I shall await Your Honor's before I begin the argument.

The Court: Very well, I have read the grounds.

(Argument followed.)

The Court: Anything else to be said?

(No response.)

MOTION OF COUNSEL FOR DEFENDANT FOR JUDGMENT OF
ACQUITTAL AND DENIAL THEREOF

The Court: The motion of the defendant for a judgment of acquittal on each and every ground of the written motion made is overruled and denied.

Anything further to come before the Court before the jury is called back in?

Mr. Sparks: Nothing further, Your Honor.

The Court: Call the jury back to the box.

(The jury returned to the box.)

Mr. Sparks: Has the defense closed?

The Court: Yes, sir.

[fol. 85] Mr. Coe: The defense closed.

ARGUMENT OF COUNSEL FOR PLAINTIFF

Mr. Sparks: If it please the Court and gentlemen of the jury, you all haven't heard much of this case. You've been cooling your heels in the corridor nearly all day, but you are supposed to decide the case on the evidence which you have heard and on the evidence which will go out with you to the jury room.

Now, the issue in this case is not, I repeat, is not whether or not Mr. Braden is a communist, a member of the Communist Party. The only issue that you have to decide is, as I told you before in my opening statement, whether or not he appeared before this committee here in Atlanta in this same building in public hearings and was asked six questions and wilfully refused to answer those six questions, and whether at the time that he wilfully refused to answer those six questions he knew or a reasonable man in his position should have known that those questions were pertinent to the matter about which

the committee was, or the Subcommittee of the Un-American Activities Committee of the House of Representatives, was inquiring. Of course, the subject of that inquiry, as you have heard, was the extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activity in the South, and entry and dissemination within the United States of foreign Communist Party propaganda.

Gentlemen, the key exhibit in this case is U. S. Exhibit 9. Just remember that. No. 9. Two more than lucky 7. This sets out the entire testimony of Mr. Carl Braden. The [fol. 86] questions and answers. You have had most of them read to you or at least the substantial part of these questions and answers read to you. I do want to recommend to you or respectfully suggest to you that you pay particular attention to U. S. Exhibit No. 9. Perhaps one member of your jury should read the entire thing to you and discuss it, because that is the key of the case. Other exhibits in this case, some of them will be out with you and some will not, but they simply describe the procedure by which this case got here. You will see how the House Un-American Activities Committee, the full committee met in Washington in the early part of 1958, I believe it was, and passed a resolution or a resolution was passed providing for the hearings down here in Atlanta, Georgia, on this subject and the objects of that are set out in that document which is in evidence and will be out before you. You will then see how three representatives were designated by Chairman Walter of Pennsylvania, Mr. Jackson, Mr. Tuck, former Governor Tuck of Virginia, I believe, and Mr. Willis, to conduct these hearings down here in Atlanta. Then you will see that in August, August 8, 1958, the subcommittee met. That was after Mr. Braden had refused to answer these questions, along with others contained in U. S. Exhibit No. 9. You will see how they met and voted contempt citations or voted to present the facts to the full committee. Then you will see how the full committee voted to present the facts of Mr. Braden for refusing to answer these questions to the House of Representatives of the United States. And

then you will see the adoption of a resolution citing him for contempt, and you will see a letter from the Honorable Sam Rayburn from Texas referring the matter to this office.

[fol. 87] As I say, that is all procedural in nature. The key to the case, as I see it, is in U. S. Exhibit No. 9. Of course, you will consider all the other exhibits as well.

Now, as a representative of the government, a prosecuting attorney in this case, I say that based upon the evidence in this case, which is U. S. Exhibit No. 9, it is undisputably clear that Mr. Braden knowingly and advisedly answered only those questions which he wanted to and when the questions got into a particular area, as will be disclosed by this report, he just simply refused to answer, clammed up on the ground of the first amendment, and on the fact that the questions were not pertinent. Just look through Exhibit No. 9 and see where time after time after time Mr. Arens and the various members of the committee directed him to answer, ordered him to answer, explained the pertinency of the question, referred back to the explanation of the pertinency of the question, and then can you say after you see that or read that and examine it, that his refusal to answer was a mistake. Can you say that he was mistaken, that he just didn't answer by accident? Can you say he didn't understand the question? Can you say that the question was not sufficiently explained to him? I don't think you can. I think all throughout this U. S. Exhibit No. 9, which is the actual record of what happened here in Atlanta, Georgia, when the subcommittee was meeting here last year shows clearly a clear wilful refusal to answer. In one place in the record he told them to go back to Washington if it was too hot for them down here. His attitude was arrogant and defiant. He is not being tried for arrogance and defiance. That's not what contempt of Congress means. But I think you [fol. 88] will find specific places where he did display arrogance and I think you can consider that on the question of whether his refusal to answer these questions was wilful. He is not being tried for that arrogance. It is merely a wilful refusal to answer a question which he knows to be pertinent.

I have thumbed through U. S. Exhibit No. 9 until it's about to fall apart, but I do want to call one more matter to your attention. I know you are tired of having people read to you from this thing but I want to read to you and call it to your attention.

"Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do you understand that?"

"Mr. Braden: Yes. I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this."

If that isn't a clear declaration of the fact that he understood that he was being ordered to answer each question—that's the thing you must decide, as to whether he was unequivocally ordered to answer each question and whether he understood that he was to answer each question. I say that's unequivocal as to each question.

[fol. 89] Then at the bottom of Page 14 Mr. Arens said:

"Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interrogation carries over with reference to each of these principal questions."

"Mr. Braden: That is understood, sir."

So we go through this record. Do not expect to find as to each of these six questions a rehashing of the entire explanation of pertinency which had been made before because the record shows clearly that he said that he understood the explanation of pertinency which was given to him at the beginning of the hearing and carried over to each succeeding question. He understood that he was directed to answer and ordered to answer each individual question. That's all there is to consider, gentlemen. You do not decide whether or not the questions were pertinent. That is a matter that is to be decided by the Court and

the Court will charge you in relation to that. That is your only function here, to decide whether it was wilful, did he understand it, was it the product of any mistaken belief on his part, mistake as to the question. You must decide did he refuse to answer them? Was that refusal wilful? We have proven all of the elements of that. There is no other verdict in this case based on the evidence than guilty on all six counts.

ARGUMENT OF COUNSEL FOR DEFENDANT

Mr. Coe: If the Court please and you gentlemen of the jury, as the government has said, the decision which you make boils down to about two lines of the indictment. It [fol. 90] is said that he was asked questions which were pertinent to the question under inquiry and he knowingly, wilfully and unlawfully refused to answer them.

Now, gentlemen, there is something about this case that strikes me as a little odd if it wasn't so serious to my client, and that is this, that we have spent the major portion of the day convincing the open mind of an impartial judge with evidence that was presented to this Court while you gentlemen were sojourning in the hall, that these questions were pertinent to the subject matter under inquiry and yet they say that Carl Braden, a man unskilled in the law, not equipped with the analytical powers of a judge upon the Federal Bench, must have been convinced that the matters were pertinent to the inquiry in the heat of the examination which occurred in this next Court room about the last of this past July. If it took half a day to do it here before the Judge, is it reasonable to assume conclusively as the government does that Carl Braden knew it in ten minutes? They tell you that Carl Braden knew it because Mr. Arens and the chairman of the committee said so, I wonder, gentlemen, if the American citizens have gotten to such a point that their public servants are their public masters so that Mr. Arens can sit in the Circuit Court of Appeals and say to Mr. Braden, "I command you to answer. This is pertinent." And Mr. Braden, irrespective of the fact that his conscience tells him otherwise, was bound to obey. Mr. Braden, gentlemen, must

know at his peril these facts. Mr. Braden must know it from the deliverance of his own intelligence and his own conscience and not necessarily accept it as law from Mount ~~Sin~~ Sinai when it is thundered down at him by Mr. Arens or Mr. Walters, the chairman of the committee.

[fol. 91] Now, gentlemen, let us see what Mr. Braden, what knowledge he brought to this hearing. Mr. Arens said that he has reliable information that the Southern Conference Educational Fund is a communist organization. Mr. Penha has said so. Who is Mr. Penha? I believe it appears that he was an F. B. I. agent planted in the Communist Party for eight years. In plain language, an informer. Mr. Penha says it is a communist organization. But Mr. Braden knew what kind of an organization it was. Mr. Carl Braden worked for it. He got his weekly pay check from it and he made his living at it. He has no hesitancy in telling you gentlemen what it was, although it may be unpopular with some of you gentlemen as it is quite unpopular in some areas of the South. He says on Page 6: "I am a worker in the integration movement in the South, being employed by the Southern Conference Educational Fund, Inc., which is a south-wide interracial organization working to bring about integration, justice, and decency in the South." He didn't have to go to Mr. Penha. He didn't have to go to Mr. Arens to know what the Southern Conference Educational Fund was. Did he have to sit so humbly by and take the hearsay statement of Mr. Arens that it was a subversive organization bent, I presume, upon overthrowing the government of the United States through having meetings in the Red Cross Building in Atlanta? Did he have to bow his head humbly before his public servants? "Yes, sir, you have said it and I will answer it." I don't think we got down to that point. What else did he know about the Southern Conference Educational Fund? He was asked, incidentally, about the meeting in the Red Cross Building in Atlanta. I submit to you gentlemen that however ignorant and however unintelligent they may think that the [fol. 92] Red Cross people are, they don't lend the use of that building to just anybody. They lend the use of that building to organizations which they deem to be humanitarian and decent. If you go there with a wild idea, rabble

rousing crowds that are going to violate the laws, you will never get into the American Red Cross Building.

He described the picture of himself, "Yeah, I believe it appears it was taken from the window across the street by an F.B.I. agent. This picture is of me and James A. Dombrowski and Mrs. Braden and Aubrey W. Williams, publisher of the Southern Farm and Home," which I don't think even Mr. Arens would contend is a subversive type of communist literature, "who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration." Those are the facts which Carl Braden knew when the committee came and asked him these questions, whether he had secured the American Red Cross Headquarters for the meeting, whether he had attended the meeting or what else he had done.

Now, let me point out to you another thing, gentlemen. Neither Carl Braden nor any other man in his right senses loves to get himself into trouble with the law. It just ain't any fun to face a trial like this or the consequences of a conviction. He was invited to take the easy way out on Page 9 of this record: Mr. Arens says this:

"Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to in-[fol. 93] voke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding." Now, there was a way out. All he had to do was humble himself before the committee and say I think that I have done something which might be a crime. I acknowledge that I am in the shadow of justifiable criminal prosecution and I want to keep my mouth shut.

Gentlemen, don't you think that if he hadn't been motivated by some very unusual motive that he wouldn't have done it? If he had been a member of the communist party, gentlemen, he'd have said that he takes the fifth amendment and have no prosecution, no peril, no subpoena, no nothing. But what did he do. He stood his ground and he would not acknowledge that he was guilty of crime. He would not

take the fifth amendment. He took the first amendment and I submit to you, gentlemen, respectfully, that the reason he took it was because he felt that in doing so ultimately in this trial and whatever else may follow he was striking a blow for the freedom of the American citizen when the long shadow of Washington bureaucracy casts itself over the people of our country.

They tell you that he was arrogant. I submit that you can read that report and you will find courtesy and decency. You will find a man standing up for his rights. If it is arrogant for an American citizen to stand up for his rights, then I glory in the arrogance of the American citizen, the American citizens who stood up for their rights against King George, III, the American citizens in this country who stood magnificently for their rights in 1860 and 1865. [fol. 94] Gentlemen, this was a characteristic of American men because they stand up for their rights.

Let me try to explain to you what was in the mind of Carl Braden when he made this refusal on the ground of the first amendment and what I think is the determinative question because, after all, government policy, social policy is made by judicial decision and the jurors are the grass roots from whence that policy springs. 172 years ago when the American Constitution was established, the first amendment was written into it as the beginning of the ten amendments that constituted the Bill of Rights. It provided that Congress shall make no law respecting an establishment of religion or the free exercise thereof; no abridging freedom of speech or of the press or the right to the people peaceably to assemble and petition their government. Why did they do that, Gentlemen? Because, as the tenth amendment says, the power of this country rests not in the king, not in the hierarchy, in the limited public servants; but it rests in the people of the United States. The humble and the great. It is the public opinion of the people of this country and from that soil of public opinion grew the government, as the great oaks grow from the soil of the forest. It all arises from a great public opinion of a democratic state and democratic society. It is essential that that public opinion shall be enlightened:

My distinguished colleague on the government's side of the table tells us that this is the first time that this has come to the State of Georgia. It is the first time that the long shadow of governmental power has cast itself over this fair state. But if they succeed in this prosecution, I fear that it will not be the last.

[fol. 95] Gentlemen, the power to investigate has a subtle effect upon public opinion. If the Un-American Activities Committee comes down here and summons half a dozen people out of the community, say a bank clerk and a railroad man and a government employee, what happens? They ask them if they are Communists. They take the fifth amendment and they go back home to their jobs and they get fired. They go out to get another job and they can't get it. They are marked men in the community in which they live and in every other community. Like the commentators that have been taken off the air. Like the screen writers that have been destroyed in their profession. Like a lawyer that I represented in the State of Florida who is about to lose his position at the bar.

John Marshall said in giving an opinion in the Supreme Court years ago that the power to tax involves the power to destroy. I submit to you gentlemen that the power to investigate involves the power to destroy the rich soil of a free public opinion from which democracy grows when it is subjected to the salty or cynical watering of investigations by the Un-American Activities Committee is like the soil of the forest that has been treated with salt or arsenic. It does not grow. A blow has been struck at the fundamental structure of the American states and the freedom of the American people.

Gentlemen, that is why Carl Braden stands before you today. He could have avoided it by simply taking the easy way out that was offered to him by the Constitution of the United States and by the suggestion of the chairman of the committee. Pretty soft. But he saw fit to stand his ground and he stood his ground for you and he stood his [fol. 96] ground for me, and he stood his ground not on something that would come from Moscow, but he stood on the principles of American liberty.

Gentlemen, let us come down out of the clouds to the detailed duties that have fallen upon this Court and this jury. The Government of the United States has been a great government. It has protected us in war and in peace. It has governed our foreign ~~regulations~~ relations. It has defended us effectively in war. I submit to you, gentlemen, if our government is to be destroyed tonight, which God forbid, it will be destroyed by the internal decay that sets in, when the Americans are unwilling to stand for their liberty, when Americans are unwilling to take positions that peril their freedom, when juries complacently say, yes, Mr. Arens said it was a Communist organization. Mr. Arens said he was a communist. Mr. Arens and the chairman ordered him to answer and he didn't answer. He must obey. My friends, we have the Un-American Activities Committee today. We have the Civil Rights Committee over in Alabama. And, if I read the papers, what will we have tomorrow? What will we have? We will have the long arm of federal bureaucracy reaching out from the capitol down to Georgia, down to Florida, down to Alabama. Some minor ~~bucanraacy~~ bureaucrat will come down from Washington and say that you must answer, the citizens of Georgia and the citizens of the South must tremble and obey. Gentlemen, that is the consequence of prosecutions of this sort. That is the consequence of the verdict they ask you for. If you render that verdict, you strike the first blow against the foundation, the internal foundation of the American liberty. They may be conscientious, although I doubt it, in [fol. 97] coming down here and making a hoop and hooray about Communism, but they are twenty times as dangerous as any Communist that ever crossed the seas because they strike at the moral fibers of the people of the United States and that is the basis of American liberty.

Gentlemen, I will urge you no further. You are American Citizens. You are conscious of the heritage of American citizens. You are Southern citizens. There sits an American citizen, a Southern citizen. Differing perhaps with some of us, but an inheritor of the same magnificent tradition that has made our country what we live for and what we admire. He stands before you to establish a principle, that he doesn't have to grapple in the dust like a slave

or servant, but he submits himself to the jury with trust and confidence that he has done his duty and that you men are conscious of this duty, conscious of the magnificent heritage of liberty that stands behind us, conscious of the well being and safety of our society. I leave it with you with confidence and trust.

Mr. Sparks: Just a few moments in conclusion, gentlemen. I confined myself in the opening statement to issues which I thought were presented, factual issues which you are to determine. Counsel for the defense, I submit, did not so confine himself. As I hear his argument, it involved itself into an attack on the House Un-American Activities Committee. If I'm not mistaken in what I heard him say, he said that congressmen whom we elected to run our country for us, to make our laws and legislate, are twenty times more dangerous than any Communist. I cannot agree with [fol. 98] that and I don't believe any member of this jury agrees with any such statement as that. He has talked about the courage of Mr. Braden in refusing to answer and refusing to take the fifth amendment which could have kept him immune from prosecution. May I suggest in answer to that argument, why was it necessary for him to do either one? Why didn't he just answer the questions with a simple yes or no. This argument by the defense has involved itself into an attack, a virtual attack on the House Un-American Activities Committee and an attack on Congress. He in effect has said that this is an invasion of the South, that the South is being invaded simply because this is one of the first cases ever tried here. The reason it's one of the first cases ever tried here is because it's one of the first times that Congress has ever come down here to Atlanta. These representatives held this hearing down here, Representative Willis from Louisiana, Representative Tuck from Virginia, former governor of Virginia, Congressman Jackson from California. Two Southerners out of three down here in Atlanta, Georgia investigating un-American activities, Communist activities in the South, and counsel holds up Mr. Braden as a hero, a man defiant, standing up for American manhood because he refuses to answer the questions of three of our elected representatives who are down here on a mission involving the security of this country.

Gentlemen, no one has a greater regard for the rights of the individual than I do, or the United States attorneys or this Court, for individual rights as guaranteed by the first amendment. However, there are occasions, when the rights of an individual to maintain privacy must be weighed in the balance on a scale against the interests of [fol.99] national security and when the interest of national security predominates, then whatever rights he has under the first amendment as an individual, I say must be subordinated to the rights of the security of this country. If national security is destroyed, where is our Constitution?

Gentlemen, I know you are tired and I know you want to get on with the decision of the case. I still say that there is only one verdict in my opinion based on the evidence in this case and that verdict is guilty on all six counts.

CHARGE TO THE JURY.

The Court: Members of the Jury, now that you have heard the evidence and the argument of counsel, the time has come to instruct you as to the law governing the case. Although you as jurors are the sole judge of the facts, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law, regardless of any opinion that you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any view of law than that given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented to the allegations of the indictment and the denial made by the not guilty plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit [fol.100] jurors to be governed by any sympathy, prejudice or public opinion. The accused and the public expect that you will carefully and impartially consider all the

evidence, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

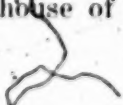
Now, the law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate, with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case.

A reasonable doubt is a fair doubt based upon common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs.

The defendant is not to be convicted on mere suspicion or conjecture. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon the evidence brought out on cross examination of the witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence. A reasonable doubt exists [fol. 101] in any case when, after a careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

Now, of course, an indictment is but a formal method of accusing a defendant of crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

Now, in this case the defendant is charged in a six count indictment with six separate violations of the federal statute, that is, Volume II, U. S. Code, Section 192, making it unlawful for anyone to refuse to obey proper command of either house of Congress or any of its committees to



appear and give testimony or to produce papers. The offense charged is frequently referred to as contempt of Congress, but it does not involve any personal animosity or dislike for a congressional committee or for any of its members, nor does it require any discourteous conduct on the part of the witness.

The statute provides that every person who, having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry, wilfully makes default or who, having appeared, refuses to answer any questions pertinent to the question under inquiry shall be deemed guilty of a misdemeanor punishable as provided by the statute.

The charge made against the defendant rests solely on the second part of the statute which makes it unlawful for a person appearing before a committee of Congress to refuse to answer any question pertinent to the question under inquiry.

[fol. 102] Now, the indictment here charges in the introduction as follows:

On July 30, 1958, in the Atlanta Division of the Northern District of Georgia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings pursuant to Public Law 601, Section 121, 79th Congress, Second session, 60 Statute at Large, Page 828, and as to House Resolution 5, 85th Congress, the defendant, Carl Braden, appeared as a witness before that subcommittee at the place and on the date above-stated and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant knowingly, wilfully and unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of the indictment which follow, each of which count will in addition merely describe the questions which were asked of the defendant and which he refused to answer.

Count 1, And did you participate in a meeting here at that time?

Count 2, Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Count 3, Are you connected with the Emergency Civil Liberties Committee?

Count 4, Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Count 5, Were you a member of the Communist Party the instant you affixed your signature to that letter?

[fol. 103] Count 6, I would just like to ask you whether you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

Now, to this indictment the defendant, of course, has entered his plea of not guilty and that forms the issue that you are to determine here in this case.

Now, I have decided those matters which it is my responsibility to determine. You are not concerned with whether the committee has a right to ask the questions or why it asked them. You are not concerned with whether this defendant was or was not a Communist or a subversive or what his answers might have been, and you are not concerned that his failure to answer may even have been upon the advice of counsel or his lawyer. In this connection you are to decide merely whether he intentionally refused to answer without regard to any motive that he may have had. Such refusal does not require evil intent or bad motive. Therefore, good motive is no defense. Even in refusing upon advice of counsel is not reason or justification. You are not to consider the validity of the objections made by the defendant to answering the questions concerned in this indictment or whether the claimed invalidity of the committee, lack of jurisdiction of the committee, or lack of pertinency of the question because these are matters for my decision and I have decided as a matter of law that the committee was properly authorized by Congress, that the questions were pertinent to the subject matter under inquiry and that the objections he made and the reasons he gave do not justify refusal to answer these questions. I will have more to say later about what constitutes intentional refusal to answer.

[fol. 104] Now, I have determined as a matter of law and I instruct that the Committee on Un-American Activities was during all times material here a valid committee of the House of Representatives and had the power to conduct this hearing and to conduct it through a subcommittee. Chairman Walter had the power to appoint a subcommittee of three or more members of his committee to conduct this hearing and to hear the testimony of this defendant.

You will note that each count in the indictment alleges that the refusal was with reference to a question pertinent to the matter under inquiry. You will not concern yourselves with this allegation as it involves a matter of law which it is the Court's duty to determine and which has been determined. I have determined as a matter of law that the committee had the right to ask these questions and the defendant had the duty to answer these questions under the conditions that I will later explain.

With these matters of law out of the way, the first question for you to decide is whether Mr. Walter, the chairman of the full committee, designated Congressmen Willis, Tuck and Jackson to constitute a subcommittee to hear the testimony on the occasion when the defendant allegedly appeared before it on July 30, 1958. You will further decide whether those congressmen undertook to act as such subcommittee and whether at least two members of such subcommittee were actually present throughout the testimony of the defendant.

In that connection, I direct your attention to the fact that it has been stipulated that such a quorum was present and I have instructed you and now instruct you that you may accept that and other stipulations as true without further proof.

[fol. 105] If you so find beyond a reasonable doubt, as I have defined that term to you, then the Court instructs you that this was a validly constituted subcommittee of the Un-American Activities Committee of the House of Representatives and as such had authority then and there to ask the questions alleged in this indictment.

The next question for you to determine is whether the defendant appeared before the subcommittee in this district on or about July 30, 1958. I do not understand that

some of these matters are contested, but here you must nevertheless find them beyond a reasonable doubt before you may convict the defendant. Then you must determine whether the subcommittee or its staff director asked the particular questions charged in each count in the indictment. Here again I do not understand that this was contested, but you must nevertheless find that the questions were asked and make this finding beyond a reasonable doubt before you can convict the defendant. If you find beyond a reasonable doubt that these questions were asked the defendant, as I have already said, it becomes the witness' duty to answer and to answer by giving a reply responsive to the questions under the conditions which I will explain to you.

Now, you are next to determine whether the defendant failed to make an answer to the questions charged in each count in the indictment. Here again I do not understand that this is contested, nevertheless you must find beyond a reasonable doubt that the defendant did fail to answer the particular question before you can convict him. Now, as to each count, if you so find that there was such a failure to answer, you will determine whether it was wilful failure, [fol. 106] and, therefore, a refusal as charged in the indictment. The word wilful does not mean that the refusal or failure to comply would necessarily be for evil or malicious purposes. That is beside the point. The reason for the refusal is immaterial so long as the refusal was a deliberate and intentional one rather than mere accident or oversight or inadvertence, or the result of a misunderstanding.

Now, I have already said that merely because the defendant may have misunderstood his right and may have thought that he had the right to refuse to answer because of the advice of counsel or for some other reason, that wouldn't be the type of misunderstanding that I have in mind. The kind of misunderstanding that I have in mind is a situation where he didn't understand that he was required to make an answer, that it hadn't been brought home to him that the questions asked were pertinent or that the subcommittee had overruled his objections and expected him to answer, notwithstanding his objections, or where a

failure to answer was due to a misunderstanding of the question itself. If you believe beyond a reasonable doubt with respect to each count that the defendant refused to answer the question alleged in that count in the indictment and that that refusal was intentional and deliberate after a clear demand by the subcommittee to answer, notwithstanding his objection, then that aspect of the proof of the case would be satisfied.

Now, to summarize what I have just said, a witness who fails to answer after making an objection must be informed by the subcommittee that his objection or reason for not answering was not accepted by the subcommittee and that demand is made upon him to answer, notwithstanding his [fol. 107] objection. In simple language, the law requires that the witness finally be given a choice to answer or refuse to answer after his objections have been made.

Under the facts in this case there is one final matter for you to determine. You will recall that this defendant objected to answering on the ground that the subcommittee had no right or power to ask these questions. I have already charged you that the subcommittee did have such power and you are not concerned and are not to consider the question of the committee's power or jurisdiction. Here in addition the defendant objected to answering each question claiming that the particular question was not pertinent or relevant to the subcommittee's investigation. Now, the Court charges you that you cannot find the defendant guilty unless you find from the evidence beyond a reasonable doubt that he refused to answer the question or questions set forth in the indictment and that such question or questions being pertinent to the question under inquiry by the committee therein described as the Court had charged you, that such pertinency was made known with reasonable certainty to the defendant at the time. The Court charges you that to be pertinent to a question under inquiry within the meaning of the law and the charges in the indictment, the questions asked must have been known by the defendant at the time of the committee's hearing to have a reasonable relation to the subject allegedly under inquiry as set forth in the bill of particulars.

Now, in this case the government contends that the subject matter under inquiry was the extent, character and

objects of Communist colonization and infiltration in the textile and other basic industries located in the South, [fol. 108] Communist Party propaganda activity in the South, and the entry and dissemination within the United States of foreign Communist Party Propaganda. If you find beyond a reasonable doubt that the subject matter under inquiry by the subcommittee at the time the defendant appeared before it was as the government contends and that the questions that the defendant allegedly refused to answer were either related to that subject matter with undisputed clarity from the wording of the particular questions, or from the course of the entire questioning of this defendant, or both, or if you find that the subcommittee made an explanation reasonably capable of describing to the ordinary person in the defendant's situation what the subject matter under inquiry was and the way the particular question related to it, then this final aspect of the criminal intent involved in this charge would have been found as to these refusals to answer these questions.

Now, to summarize what I had just said with respect to the criminal intent involved in this offense of refusing to answer these questions, the law requires that a witness stating an objection to answering must be given an opportunity by the subcommittee to make a deliberate final choice whether to answer or not and that choice to answer or not must be an informed choice of the sort that I have just mentioned.

I have given you the necessary elements of the offense charged in this indictment which involves questions of fact to be decided by you. I will briefly summarize them.

First, the offense, if committed, took place in this district.

[fol. 109] Second, that a subcommittee was designated by the chairman consisting of three members and that at least two members thereof met on the date charged in the indictment and were present throughout the testimony of this defendant:

Third, that the defendant appeared before said subcommittee on that date.

Fourth, he was asked the questions specified in each count in the indictment.

Fifth, that he wilfully refused to answer these questions after having been directed to do so.

Sixth, that the subject matter under inquiry and the relationship or pertinency of the individual questions to that subject matter would have been clear to the average person in the defendant's position.

Now, gentlemen of the jury, you will consider each count of the indictment and if you find every one of these factual elements which I have left for your consideration to be true and you find that beyond a reasonable doubt, it would then be your duty to convict the defendant on that count. If you do not so find or if you have a reasonable doubt about any one of these factual elements, you must give the defendant the benefit of that doubt and acquit him on that count.

Now, gentlemen of the jury, as in all legal investigations, the subject of this legal investigation is the discovery of the truth. What you want to undertake to do in this case is to find out what the truth of it is, and if after considering all of the evidence applying to the facts as you find them [fol. 110] to be and the law that the Court has given you in charge, you are convinced to a moral and reasonable certainty and beyond a reasonable doubt of the defendant's guilt, then it is your duty to convict him. If you are not so satisfied or if you have a reasonable doubt on your mind as to his guilt, it is equally your duty to give the defendant the benefit of that doubt and acquit. Whatever you believe the truth of the case to be, that should be your verdict, bearing in mind that you are not responsible for the consequences of your verdict but you are responsible for its truth. Whatever your verdict, you will enter it on the blank provided by the clerk for you, inserting in that blank the term "guilty" or "not guilty" however you find the defendant to be as to that particular count, bearing in mind that you must consider each count separately and determine the guilt or not guilt of the defendant as to each particular count. If you find the defendant guilty, the form of that verdict would be: We the jury find the defendant, Carl Braden, guilty, naming the Count or counts upon which you find him guilty. If you find him not guilty, then the form of that verdict would be: We the jury find the defen-

dant not guilty, inserting in the blank as to that particular count or counts that you reached that verdict, the term "not guilty." Date it and let your foreman sign it and return it into open Court. You may retire just outside the Courtroom door and await further instructions.

(The jury retired to the corridor.)

The Court: Any exceptions to the charge on behalf of the defendant?

[fol. 111] EXCEPTIONS OF COUNSEL FOR DEFENDANT

Mr. Coe: Your Honor, the defendant excepts to the portion of the charge left—leaving the jury free to consider the question of extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South because it is not found upon the evidence.

The defendant makes the same exception to permitting the jury to consider the entry and dissemination into the United States of foreign Communist Party propaganda on the ground it was not founded upon the evidence.

The defendant further excepts to the withdrawal by the Court of the issue of pertinency and materiality of questions from the jury on two grounds. First, that the Court's charge that the questions are as a matter of law material is founded on a misconstruction of the law and evidence and, secondly, that that is a ~~practical~~ factual issue.

The defendant would likewise request the Court to make it clear to the jury, and it was not completely clear to me, that they might find him guilty on some counts and not guilty on others.

The Court: Bring back the jury.

(The jury returned to the box.)

The Court: Gentlemen of the jury, I may not have made it clear that it is within your province to find the defendant guilty on one count and not guilty on other counts, or you may find the defendant not guilty on one count and guilty on other counts. In other words, it is within your province [fol. 112] to find the defendant guilty or not guilty on any one or all of the counts. You may separate the finding as

to each count in the indictment and you write on that finding how you find him, whether he is guilty or not guilty as to that particular count. You may make separate and distinct findings as to each count. You may convict him on one or more. You may acquit him on one or more. You may convict him on one or all or you may acquit him on all. However you find him to be, you so specify as to each particular count in the indictment.

(The jury retired to consider the case.)

The Court: Let the record show that the original Exhibit No. 9 is retained in Court and the immediate copy will be marked by the clerk as Exhibit No. 9 and furnished to the jury and the manner of deletion has been agreed upon by counsel for the government and the defendant.

Mr. Coe: That is correct.

Filed April 21, 1959.

[fol. 113]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO ARREST JUDGMENT—Filed
January 24, 1959

Comes now the Defendant and respectfully moves the Court to arrest judgment upon the verdict in the above entitled cause, because:

- (1) The indictment states no offense.
- (2) Because the indictment shows upon its face that the questions for the refusal to answer which he was charged, are absolutely privileged under the provisions of the First Amendment to the Constitution of the United States.
- (3) Because the indictment shows upon its face that the questions for refusal to answer which he was charged, are completely immaterial to any subject of proper legislative investigation.

John M. Coe, Leonard Boudin, Attorneys for Defendant.

[fol. 114]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

vs.

CARL BRADEN:

JUDGMENT AND COMMITMENT—February 2, 1959

No. 21,757 Criminal Indictment in Six (6) Counts for violation of (2 U.S.C. 192).

On this 2nd day of February, 1959 came the attorney for the government and the defendant appeared in person and by counsel, John M. Coe, Esq.

~~It Is~~ Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of guilty of the offense of refusing to answer questions before a Subcommittee of Un American Activities as charged In the Indictment and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

~~It Is~~ Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the ~~Attorney General~~ or his authorized representative for imprisonment for a period of Twelve (12) Months on count one; Twelve (12) Months on count two; Twelve (12) Months on count three; Twelve (12) Months on count four; Twelve (12) Months on count five; [fol. 115] and Twelve (12) Months on count six of the indictment in the above-entitled cause, and that the execution of these sentences on counts one, two, three, four, five and six shall run concurrently.

Motion for a New Trial having been filed by the defendant,

It Is Further Ordered that the said defendant be enlarged upon bond in the sum of \$1000.00, pending the decision of the Court on Motion for a New Trial.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Boyd Sloan, United States District Judge.

The Court recommends commitment to:

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT FOR NEW TRIAL AND ORDER THEREON
—March 12, 1959

The above named defendant has filed a motion for a new trial in the above case on the grounds that the Court erred:

1. In holding that the authorizing resolution of the House Un-American Activities Committee was sufficient [fol. 116] to justify interrogation of a witness under compulsory process upon the subjects and by the questions embodied in the indictment.

2. In charging the jury as a matter of law that the questions embodied in the indictment were pertinent to the subject matter under inquiry.

3. In refusing to charge the jury that if the questions embodied in the indictment sought information privileged under the First Amendment to the Constitution of the United States, the jury should acquit the defendant.

The defendant has also filed a motion to arrest judgment on the verdict in the case on the grounds that the indictment:

1. States no offense.

2. Shows upon its face that the "questions for the refusal to answer which he was charged, are absolutely privileged under the provisions of the First Amendment to the Constitution of the United States."

3. Shows upon its face that such questions are completely immaterial to any subject of proper legislative investigation.

The above motions are now properly before the Court for determination under the Local Rules of this Court and after due consideration thereof, it is

[fol. 117] Ordered that defendant's motion for a new trial and his motion to arrest judgment upon the verdict be, and they are hereby overruled and denied.

This the 12th day of March, 1959.

Boyd Sloan, United States District Judge.

Filed March 13, 1959.

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Title omitted]

NOTICE OF APPEAL—Filed March 18, 1959

Name and address of Appellant: Carl Braden of 4403 Virginia Avenue, Louisville (11) Kentucky.

Names and Addresses of Appellant's Attorneys: John M. Coe, P.O. Box 29, Pensacola, Florida; Leonard B. Boudin, 25 Broad Street, New York (4), New York; Conrad J. Lynn, Suite 1117--141 Broadway, New York, New York; and C. Ewbank Tucker, 1625 West Kentucky Street, Louisville, Kentucky.

Offense; Contempt of Congress (Violation Title 2 U. S. C. Sec. 192) Counts 1 to 6 both inclusive.

Judgment of conviction of the above named offense, of date February 2nd, 1959, upon which the following sentence [fol. 118] was imposed, to-wit: Twelve months imprisonment on each count, to run concurrently.

I, the above named Appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated March 17, 1959.

John M. Coe, Louis B. Boudin, Conrad J. Lynn,
C. Ewbank Tucker, Appellant's Attorneys.

Designation of Contents; Omitted from the printed record pursuant to designation of counsel as to printing record, copied at Page 1.

[fol. 119]

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS BY DEFENDANT—Filed March 18, 1959

In accordance with the provisions of Rule #75(d), Defendant (Appellant) files the following statement of points:

(1) That the Court erred in denying Defendant's motion to dismiss.

(2) That the Court erred in overruling Defendant's motion for judgment of acquittal.

(3) Defendant was subpoenaed by the Committee because he had exercised his right of petition to Congress in criticizing the Committee's decision to hold hearings in Atlanta, in supporting the Supreme Court's decision in the field of integration and in opposing legislation which would overcome the effect of the Supreme Court's decision in *Commonwealth v. Nelson*, 350 U. S. 497.

(4) That the Court erred in charging the jury as a matter of law that the questions set forth in the indictment were pertinent to the matter under inquiry.

(5) That the Court erred in overruling Defendant's motion in arrest of Judgment.

John M. Coe, Leonard B. Boudin, Conrad J. Lynn,
C. Ewbank Tucker, Appellant's Attorneys.

[fol. 120]

IN UNITED STATES DISTRICT COURT

ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBITS—

March 18, 1959

The Court being of opinion that the original papers and exhibits herein should be sent to the Appellate Court in lieu of copies, it is:

Ordered that the Clerk of this Court do transmit to the Clerk of the United States Court of Appeals for the Fifth Circuit, with the record on appeal in this cause, all of the original exhibits offered in evidence that may be called for by the designation of either party, in lieu of copies thereof.

Done and Ordered at Atlanta, Gainesville, in the Northern District of Georgia, this 18th day of March, A. D., 1959.

Boyd Sloan, United States District Judge.

Cross Designation of Contents of Records on Appeal;

Order Extending Time to File Record on Appeal;

Stipulation as to Corrections in the Transcript;

Omitted from the printed record pursuant to designation of counsel as to printing record copied at Page 2.

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[fol. 121]

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 1.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 2 In the House of Representatives, U. S.,
January 3, 1957.

Resolved, That a message be sent to the Senate to inform that body that a quorum of the House of Representatives has assembled; that Sam Rayburn, a Representative from

the State of Texas, has been elected Speaker; and Ralph R. Roberts, a citizen of the State of Indiana, Clerk of the House of Representatives of the Eighty-fifth Congress.

Attest:

(Seal)

RALPH R. ROBERTS,
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 2.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 2 In the House of Representatives, U. S.,
January 7, 1959.

Resolved, That Ralph R. Roberts, of the State of Indiana, be, and he is hereby, chosen Clerk of the House of Representatives;

[fol. 122] That Zeake W. Johnson, Junior, of the State of Tennessee, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

That William M. Miller, of the State of Mississippi, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

That H. H. Morris, of the State of Kentucky, be, and he is hereby, chosen Postmaster of the House of Representatives;

That Reverend Bernard Braskamp, Doctor of Divinity, of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Attest:

(Seal)

RALPH R. ROBERTS,
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 3.

Admitted Jan. 22, 1959.

Case No. 21757.

H. Res. 5 In the House of Representatives, U. S.,
January 3, 1957.

Resolved, That the rules of the House of Representatives of the Eighty-fourth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the rules [fol. 123] of the House of Representatives of the Eighty-fifth Congress.

Attest:

(Seal)

RALPH R. ROBERTS,
Clerk.

IN UNITED STATES DISTRICT COURT

U. S. EXHIBIT No. 9.

Admitted Jan. 22, 1959.

Case No. 21757.

Tuesday, July 29, 1958

United States House of Representatives, Subcommittee of
the Committee on Un-American Activities, Atlanta, Ga.

Public Hearing.

A subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:07 a. m., in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Francis E. Walter (the chairman) presiding.

Committee members present: Representatives Francis E. Walter, of Pennsylvania; Edwin E. Willis, of Louisiana;

William M. Tuck, of Virginia; and Donald L. Jackson, of California.

[fol. 124] Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

The Chairman. The Committee will be in order.

Let there be incorporated in the body of the record the Resolution of the Committee on Un-American Activities authorizing and directing the holding of the instant hearings here in Atlanta.

(The information follows:)

Be It Resolved, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

- (a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member [fol. 125] of the Communist Party with knowledge of the purposes or objectives thereof; and

- (b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative pur-

pose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

The Chairman. Let there likewise be incorporated in the body of the record the order of appointment by myself of the subcommittee to conduct the hearings.

(The information follows:)

June 24, 1958.

To: Mr. Richard Arnes
Staff Director

House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee [fol. 126] on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958 at 10:00 A. M. on subjects under investigation by the Committee, and take such testimony on said days or succeeding days as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

FRANCIS E. WALTER,
Chairman, Committee on Un-American Activities.

Representative Francis E. Walter, chairman of the full committee presided over the hearing and made the following statement:

The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress, to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

[fol. 127] In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States [fol. 128] today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers

of the Nation and masquerades behind a facade of humanitarianism.

We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Federal Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." I was somewhat gratified to receive a letter from Mr. J. Edgar Hoover, Director of [fol. 129] the F. B. I. in regard to this booklet, part of which letter reads as follows:

This booklet depicts another example of the apparent ease with which the Communist have been able to enlist the support of misguided individuals to assist them in obscuring their subversive workings. Certainly the real meaning of civil liberties is not understood by these Communist apologists.

Your Committee's role in safeguarding our freedom is well known to every patriotic citizen, and real Americans are not going to be fooled or misled by efforts to discredit your vital task.

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents, who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpoenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be [fol. 130] here for many months to the neglect of our work elsewhere.

It is a standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining any testimony adversely affecting him. It is also the policy of the committee to accord any witness the privilege of being represented by counsel; but within the provisions of the rule of this committee, counsel's sole and exclusive prerogative is to advise his client.

I would remind those present that a disturbance of any kind or an audible comment during the hearings will not be permitted. This is a serious proceeding in which we are earnestly trying to discharge an important and arduous duty with the general objective of maintaining the security of this great Nation.

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Wednesday, July 30, 1958.

United States House of Representatives, Subcommittee of
the Committee on Un-American Activities, Atlanta,
Ga.

Public Hearing.

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10 a. m. in the Court-[fol. 131] room, Old Post Office Building, Atlanta, Ga., Honorable Edwin E. Willis (chairman of the subcommittee) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

Mr. Willis. The subcommittee will please come to order. Counsel, will you call your first witness?

Mr. Arens: Mr. Carl Braden, kindly come forward.

Mr. Braden: I have two counsel, Mr. Chairman.

Mr. Willis: All right. Please raise your right hand. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Braden: I do.

[fol. 132] Testimony of Carl Braden, Accompanied By Counsel, ~~C. E.~~ Ewbank Tucker and John M. Coe.

Mr. Arens: Kindly identify yourself by name, residence, and occupation.

Mr. Braden: My name is Carl Braden. I live at 4403 Virginia Avenue, in Louisville, Kentucky. I am a worker in the integration movement in the South, ~~having been~~ being employed by the Southern Conference Educational Fund, Inc. Which is a Southwide interracial organization working to bring about integration, justice, and decency in the South.

Mr. Arens: Mr. Braden, you are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. Braden: I am. I was vacationing in Rhode Island when a United States marshal took me off the beach and handed me a subpoena.

Mr. Arens: And you are represented by counsel?

Mr. Braden: I am.

Mr. Arens: Counsel, will you kindly identify yourselves?
[fol. 133] Mr. Tucker: C. Ewbank Tucker of Louisville,
Kentucky; Louisville, Kentucky, member of the Kentucky
State Bar.

Mr. Coe: John M. Coe of Pensacola, Florida, member of
the Bar of Florida and the Supreme Court of the United
States.

Mr. Arens: In what capacity are you employed, Mr.
Braden, with the Southern Conference Educational Fund?

Mr. Braden: I am employed as field secretary, and I am
also associate editor of their newspaper, the Southern
Patriot, which is a paper that disseminates information on
integration in the South and about the people who are work-
ing for integration.

Mr. Arens: How long have you been so employed, please,
sir?

Mr. Braden: A year.

Mr. Arens: And what was your employment immediately
prior to your present employment?

Mr. Braden: I was employed—I was unemployed as a
result of harassment and prosecution resulting from my
efforts to bring about integration in Louisville, Kentucky.
[fol. 134] Mr. Arens: And what was your last principal
occupation?

Mr. Braden: I was a newspaper man, employed as a copy
editor by the Louisville Courier-Journal.

Mr. Arens: How long did that employment endure?

Mr. Braden: I was employed on two different occasions.
You mean my entire newspaper career or—

Mr. Arens: Just the highlights, please, sir.

Mr. Braden: All right. I was a reporter and rewrite man
for the Louisville Herald-Post from 1930 to 1936; a reporter
and editor for the Cincinnati Inquirer; city editor of the
Harlan, Kentucky, Daily Enterprise; labor reporter for
the Louisville Times; and then editor for the Courier-
Journal, in addition to being editor of several labor news-
papers.

Mr. Arens: Would you give us now please just a word
about your education?

Mr. Braden: I studied from 1928 to 1930 for the Catholic
priesthood. I might add that I am now a member of the
Episcopal Church.

[fol. 135] Mr. Arens: When did you complete your formal education?

Mr. Braden: I did not attend school after 1930.

Mr. Arens: Mr. Braden, I understand you to say you were vacationing in Rhode Island when you were served with the subpoena to appear before this committee, is that correct?

Mr. Braden: That is right, sir.

Mr. Arens: With whom were you visiting in Rhode Island?

Mr. Braden: I was visiting Harvey O'Connor.

Mr. Arens: Can you tell us, if you please, sir, what his occupation is?

Mr. Braden: Harvey O'Connor is a writer.

Mr. Arens: Is he connected with the Emergency Civil Liberties Committee?

Mr. Braden: He is the chairman of it, the national chairman.

[fol. 136] Mr. Arens: And where did you come from to your point in Rhode Island; where was your immediate point of departure before you arrived in Rhode Island?

Mr. Braden: Mr. Arens, I believe this is outside the scope of any possible—this is not pertinent to any possible investigation that this committee might be conducting, and I also believe that it is an invasion of my right to associate under the first amendment, and I therefore decline to answer.

Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer; and I should like, for the purpose of making the record absolutely clear, to explain to the witness now the pertinency of the question.

Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emo-

tional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

[fol. 137] Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H. R. 9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting registration of Communists; some of these provisions undertake to tighten the security laws respecting the dissemination of Communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should not be recommended for enactment.

If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey

O'Connor, who has been identified as a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and ~~other~~ another organization that ~~have~~ has been cited by a congressional committee as a Communist front.

If you will tell us sir, now, of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the duties and responsibilities which it has upon it.

Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

Mr. Willis: I think, sir, that a sufficient foundation has been laid to make the question completely pertinent, and I direct you to answer the question.

Mr. Braden: In the first place, Mr. Chairman, Mr. Arens has been grossly misinformed; and it still remains a fact that my beliefs and my associations are none of the business of this committee.

[fol. 139] Mr. Willis: In other words, you are maintaining your attitude of refusing to answer?

Mr. Braden: On the grounds of the first amendment to the United States Constitution, which protects the right of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly. On that ground I stand, sir.

While you are investigating, Mr. Arens, you ought to investigate some of the atrocities against the Jews and Negroes in the South, such as the picketing of the Atlanta Journal last Sunday morning.

Mr. Arens: Now, kindly tell the committee, if you please, sir, are you now, this minute, a member of the Communist Party?

Mr. Braden: I stand on my previous position under the first amendment, that such a question has no pertinency to any legislative purpose and it violates my belief.

Mr. Willis: Would you kindly defer one second?

Proceed with your next question, Mr. Counsel.

Mr. Arens: Excuse me just a moment. Mr. Chairman, may we have the reporter read back just the last line or so, so I am thoroughly conversant?

[fol. 140] Mr. Willis: What was the outstanding question? The outstanding question was: Are you now a member of the Communist Party? If I am not mistaken, the witness refused to answer the question, but did not invoke the privileges against self-incrimination provided in the fifth amendment to the Constitution of the United States. That is correct, is it not?

Mr. Braden: And I stated my grounds on the first amendment, on the grounds that the question has no possible pertinency to any legislation.

Mr. Arens: Yes. I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar questions which I am intending to propose to you.

Mr. Braden: Should I take that up with counsel, or what?

Mr. Arens: I am just announcing for the record now.

Mr. Braden: You are doing this—

[fol. 141] Mr. Arens: If, as, and when this particular proceeding is subject to judicial review, it will be thoroughly understood that the questions which I propose to propound to you today will be geared to the pertinency which I summarily explained to you a few moments ago.

Mr. Braden: Is this pertinent insofar as the integration movement is concerned?

Mr. Arens: Sir, kindly tell us—

Mr. Willis: Let the Chair understand the situation. And I think that should be made perfectly clear. I think the question of pertinency of these hearings has been completely explained and is a matter of record. Without repetition, you are now on your guard as to why these questions are being propounded to you, all of them; and let that basis be the general basis for the question.

Now do I understand that you have refused to answer the question as to whether or not you are now a member of the Communist Party solely upon the invocation of the provisions of the first amendment, but that you have not invoked the protection of the fifth amendment to the Constitution. Is that correct?

Mr. Braden: That is right, sir. I am standing on the Watkins, Sweezy, Koenigsberg, and other decisions of the United States Supreme Court which protect my right, and [fol. 142] the Constitution as they interpret the Constitution of the United States, protecting my right to private belief and association.

Mr. Arens: And let it be clear also, sir, that I do not propose, nor have I thus far at any time undertaken, to probe at private beliefs. We are interested here solely in your participation in an organization which is controlled by a Godless, atheistic conspiracy, which is sweeping the world and which ultimately threatens, and will threaten, the integrity of this Nation; and if this committee of the United States Congress cannot solicit from a citizen information respecting the operation within the confines of the border of this Godless, atheistic conspiracy, God help this country.

Mr. Braden: Are you saying integration is communism like they do in Louisiana?

Mr. Arens: Now would you kindly tell us whether or not Mrs. Alberta Ahearn, A-h-e-a-r-n, was in error when she took an oath before the Committee on Un-American Activities and testified that while she was a member of the Communist Party she knew you, sir, as a member of the Communist Party? We would like to now afford you an opportunity to deny that identification while you are under oath, sir. Do you care to avail yourself of that opportunity?

Mr. Braden: I stand on the same grounds as I stood on before. You are probing into private beliefs and associations, which are protected by the first amendment of the United States. The question has no possible pertinency to any legislative purpose. The mandate of this committee is so vague that nobody knows what you are supposed to be investigating.

Mr. Arens: We will tell you now, communism and Communists—

Mr. Braden: Integration is what you are investigating. All the people subpoenaed here are integrationists.

Mr. Jackson: Are all of the people subpoenaed here also Communists?

Mr. Braden: I will leave that to you.

Mr. Jackson: We are trying to determine that fact; and it would certainly seem that when we have testimony under oath which so identifies witnesses, that there must be some flame with all of the smoke.

Mr. Braden: Have any of your witnesses identified the anti-Semite who was picketing the Journal Building Sunday morning, Billy Branam?

Mr. Jackson: Do you suggest that this committee of the Congress should take over the police powers? Do you suggest if somebody was shot on the street corner in Atlanta—[fol. 144] Mr. Braden: That is what you are doing, Mr. Jackson.

Mr. Jackson: Just a moment—that this committee of Congress, which has no such mandate, should go out and make investigation of that particular form of violence? This is an investigation that is bounded by certain very clear-cut and distinct lines, your definition to the contrary. We are told to investigate the extent and scope of propaganda activities within the United States. That is precisely what we are doing. And when you cast doubt, or attempt to cast doubt, on the relevancy of the question when you are in the position you are to influence public opinion through your writings—and I gather through your writings on behalf of the Communist Party—it is very clearly within the purview of this committee to inquire into those activities. I do not care what you think. I have not the slightest interest in—

Mr. Braden: Mr. Arens just asked me—

Mr. Jackson: Slightest interest in your opinions. I am sure that your opinions would be extremely interesting, but I am not interested in them.

What I am interested in, is what are you doing on behalf of the Communist Party? We are not going to be clouded, so far as I am concerned, by talking about integra-

tion and segregation. This committee is not concerned in that. This committee is concerned in what you are doing in behalf of the Communist conspiracy. It may be that your [fol. 145] actions parallel, as the chairman said, a very humanitarian thing, a thing which is emotional and a thing in which many of us are in sympathy.

I don't know but what I made a great contribution to civil rights as you have, as a member of the Congress, because I also voted for a great many things, but I voted for them out of American principles, and I have not agitated for them out of any sympathy for the Communist cause.

Mr. Braden: Anything I do is done by American principles, Mr. Jackson, and you asked me if I think you should be investigating violence; and I think you should be investigating violence against Jews and Negroes in the South, the bombing of synagogues, the bombing of Negro homes. That is the kind of thing you should be investigating.

Mr. Jackson: I suggest that you go before the Congress of the United States and so petition it to change the charge on this committee.

Mr. Braden: Two hundred Negro leaders in the South petitioned the Congress of the United States last week in connection with this hearing in Atlanta.

Mr. Jackson: After looking at some of the names on this list, the letters went into the circular files of many members, because it was quite obvious that a number of names on that letter were names of those that had been closely associated with the Communist Party. Their interest and [fol. 146] major part does not lie with honest integration. Their interest lies with the purposes of the Communist Party. And that is what we are looking into, and let us not be clouding this discussion and this hearing this morning by any more nonsense that we are here as representatives of the United States Government to further, or to destroy, or to have anything to do with, integration. I resent it as an individual member of the Congress.

Mr. Braden: I think the 200 Negro leaders who signed that statement ought to resent your statement about their political affiliations.

Mr. Arens: Now we would like to display to you a copy of this statement which you have just alluded to, which has been received in many quarters in the United States Con-

gress. Did you prepare that open letter which was signed by a number of people and—

Mr. Braden: Shall I read it first?

Mr. Arens: Directed to the United States Congress? Did you prepare that letter? Kindly answer the question.

Mr. Braden: I would like to read the letter, sir.

Mr. Arens: Take your time and read it, yes, sir.

[fol. 147] Mr. Braden: This is an open letter to the United States House of Representatives:

We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

As Negroes residing in Southern states and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern states. To cite only a few examples, there are the bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as "subversive" any citizen who is inclined to be liberal or an independent thinker.

For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees, in trying to attach the "subversive" label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

[fol. 148] It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our

great needs in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled "subversive" by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood.

This letter is dated July 22, 1958, which is the day that my subpoena was dated in Washington, D. C., by Congressman Francis Walter. There it is.

Mr. Arens: Now, would you kindly answer just 2 questions with reference to this letter? Question number 1 is: What did you, an identified member of the Communist Party, have to do with this letter?

[fol. 149] Mr. Braden: I will have to stand on my first amendment rights for private beliefs and association on the grounds that the question has no possible pertinency to any legislation.

Mr. Arens: Now question number 2—

Mr. Willis: I think you should be more specific and ask him did he prepare it.

Mr. Arens: Did you prepare the letter, Mr. Braden?

Mr. Willis: Or have anything to do with its preparation?

(The witness conferred with his counsel.)

Mr. Braden: I will have to stand again on the first amendment, the vagueness of the mandate of the committee, and the pertinency of the investigation and the legislative—

Mr. Willis: The Chair wants to make this statement for the record: Of course, let me assure you that this committee is not in accord with your alleged grounds as the basis for refusing to answer these questions.

On the contrary, we take a different view. You have 2 counsel, and I know you realize why I am making this clear. You have your choice. You may allow your counsel to confer with you. We think a basis has been made; we are quite familiar, I assure you, with the decisions to which you refer. And I want to make the record perfectly clear.

Mr. Braden: Yes, sir.

Mr. Willis: I think you understand the position of this committee.

Mr. Braden: Yes, sir, I do. And I hope you understand my position.

Mr. Jackson: Mr. Chairman, I want to join the chairman in his statement. I too, am not satisfied with the reason he gives for declination to answer the question. I think the record should show very affirmatively that there is an instance of communication signed by a number of individuals and addressed to Members of the Congress of the United States.

There is a very strong possibility that that letter was prepared by a Communist; and it points up one of the things that this committee has been trying to put across, that well-meaning people pursuing a very worthwhile goal are very frequently not sufficiently advised as to what they are doing when they lend their names to various petitions, letters, and so forth. A very strong likelihood exists—and we cannot know because of the refusal of the witness to answer whether he prepared this letter—but a strong likelihood exists that the letter in question was prepared under Communist direction; that those who signed it signed a document which was prepared by the Communist Party for their own purposes.

Thank you, Mr. Chairman.

Mr. Braden: I am sure the people who signed the letter will appreciate those aspersions, Mr. Jackson.

Mr. Jackson: The people who did what?

Mr. Braden: The people who signed the letter, I am sure, will appreciate the aspersions on their intelligence.

Mr. Jackson: If they will pay a little more attention to what they are doing and have a little less concern about some of the other non-important things, I think everyone concerned will get along a lot better.

Mr. Braden: I think that would be true of the committee.

Mr. Jackson: I still say that the attribution on the letterhead appears that it has been prepared by a Communist organization that has been cited.

Mr. Arens: Mr. Chairman, I respectfully suggest that the entire document that I displayed to the witness be ap-[fol. 152] propriately marked and incorporated by reference in the record.

Mr. Willis: Let the document be so incorporated.

(Document marked "Braden Exhibit No. 1," and retained in committee files.)

Mr. Braden: Will that include the signers, Mr. Chairman, the names of the signers also?

Mr. Arens: Now, Mr. Braden, please tell the committee when you were last here in the Atlanta area pursuant to your work.

(The witness conferred with his counsel.)

Mr. Braden: I am trying to think exactly when it was, sir. The latter part of May.

Mr. Arens: Of this year?

Mr. Braden: Yes, sir.

Mr. Arens: Were you here pursuant to the official assignment which you have as a field organizer or field secretary, as it were, of the Southern Conference Educational Fund?

[fol. 153] Mr. Braden: Yes, sir. I travel all over the South in the interest of integration.

Mr. Arens: And where did you hold your meeting here in May?

Mr. Braden: Did you ask me about a meeting?

Mr. Arens: Did you have a meeting here in May?

Mr. Braden: Again I will have to stand on the first amendment on the grounds that this is an invasion of private belief and association; that the question has no possible pertinency to any possible legislative purpose; and that the mandate establishing this committee is too vague for anybody to know what you are investigating.

Mr. Arens: Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interrogation carries over with reference to each of these principal questions.

Mr. Braden: That is understood, sir.

Mr. Arens: Were you in the Atlanta area in December of 1957?

[fol. 154] Mr. Braden: I beg your pardon, sir?

Mr. Arens: Were you in the Atlanta area in December of 1957?

Mr. Braden: Yes.

Mr. Arens: And did you participate in a meeting here at that time?

Mr. Braden: Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?

Mr. Willis: Well, it is understood that you are referring to the first amendment.

Mr. Braden: The challenging of the pertinency of the question, challenging the mandate of the committee, and my rights under the first amendment.

Mr. Arens: Then, Mr. Chairman, if there is to be an understanding on this record that there is, in response to each of these principal questions, a challenge to the pertinency of the question, I respectfully suggest and request that the record likewise in each instance, unless otherwise directed by the chairman, show a direction to the witness to answer the question.

[fol. 155] Mr. Willis: Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do we understand that?

Mr. Braden: Yes. I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this.

Mr. Arens: I will not, however, be precluded—

Mr. Willis: Let me suggest this: I think our budget for national defense is something like, oh, \$38 to \$40 billion per year. And I think we all know that the trouble makers are the masters of the Kremlin—Communist conspiracy, worldwide I am talking about—and here the representatives of the people in Congress feel compelled to spend the taxpayers' money, this huge sum. And to indicate what a billion dollars is, it comes to my mind that, as a matter of arithmetic, a billion minutes have not ticked or gone by since the birth of Christ, and we are spending almost \$40 billion a year to fight this very thing to defend ourselves.

Now, sir, you are placing yourself in a position of saying that Congress has no right to inquire into the Communist conspiracy in America.

Next question.

[fol. 156] Mr. Braden: I am not saying you have no business at that. I am just saying your mandate is so vague that nobody knows what you have a right to investigate, and the Supreme Court has indicated—

Mr. Willis: You will be surprised how familiar we are with the decisions.

Mr. Braden: The Watkins—

Mr. Willis: That is all right. Proceed.

Mr. Arens: Now, Mr. Chairman, I should like, notwithstanding the general direction that the explanation of pertinency carries over to the principal questions, to add a brief explanation with reference to the question which I intend to propound in just a moment.

Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for 8 years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a di-

rective to penetrate non-Communist organizations, fine, patriotic, humanitarian organizations for the purpose of worming their way in, to further the Communist objectives. [fol. 157] I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

Mr. Braden: Before we get to that, Mr. Arens, you said that Mr. Penha made some statements there.

Mr. Arens: Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question. This record is crystal clear if I ever saw one.

Mr. Braden: Mr. Chairman, the man made a lot of statements.

Mr. Arens: I do not think the committee needs to be harassed or haggled with by an identified Communist.

Mr. Willis: Answer the question.

Mr. Arens: Now, sir, kindly answer the question.

[fol. 158] Mr. Braden: Shall I take these pictures one by one?

Mr. Arens: Kindly tell us whether or not these pictures are a true and correct reproduction of yourself and your wife entering the American Red Cross Building in December of 1957.

Mr. Braden: While we are at it, my wife is not here, so I guess I can identify all of us, let's see. This is a picture of me and James A. Dombrowski, executive secretary of the Southern Conference Educational Fund, and Mrs. Anne Braden, myself and Aubrey W. Williams, publisher of the Southern Farm and Home, who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration.

While we are on the question of the Southern Conference Educational Fund, Mr. Chairman, since I think we—

Mr. Willis: Please do not—

Mr. Arens: I respectfully suggest, Mr. Chairman, the witness now be ordered and directed to answer this particular question.

Mr. Braden: I did answer it. I said what the picture showed.

[fol. 159] Mr. Arens: You did not, sir. Do those pictures fairly and honestly and accurately represent you and your wife as you were entering the American Red Cross in December of 1957?

Mr. Braden: These are pictures taken from a building across the street, apparently by persons spying on the board of the Southern Conference Educational Fund which met at the American Red Cross Building here in Atlanta last December 15. This is a common technique for harassing liberals in the South.

Mr. Arens: Now, did the Southern Conference Educational Fund meet in the American Red Cross Building in December of 1957?

Mr. Braden: It is a matter of public record that they did, and you probably have a copy of the board meetings—

Mr. Arens: Excuse me. Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Mr. Braden: I will have to stand on my previous refusal to answer on the same grounds, first amendment and so forth.

Mr. Arens: Did you participate in the session?

[fol. 160] Mr. Braden: Same grounds.

Mr. Arens: The record is clear, is it not, Mr. Chairman and counsel to the witness, that in response to each of these refusals to answer, the Chair has given a direction and there has been an appropriate explanation of the pertinency?

I see you nod your head. The reporter cannot get a yes from your nod.

Mr. Braden: I understand. My counsel and I understand that.

Mr. Arens: Now, sir, are you connected with the Emergency Civil Liberties Committee?

Mr. Braden: Same ground.

Mr. Willis: You mean you refuse to answer on the same ground?

Mr. Braden: Yes, sir. I refuse to answer on the same ground. It being, you know—do we have to go through it each time or will it be understood, sir?

Mr. Arens: Was your association with Harvey O'Connor, an identified Communist, in Rhode Island in furtherance [fol. 161] of the work of the Emergency Civil Liberties Committee?

Mr. Braden: I was on vacation in Rhode Island, Mr. Arens, and you sent a subpoena up there and took me off my vacation where it was cool and brought me down here in Atlanta where it is 90 degrees.

Mr. Jackson: It is just as hot for the committee, I might add.

Mr. Braden: You can always go back to Washington.

Mr. Jackson: That is not much improvement.

Mr. Arens: Now kindly answer the question. Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Mr. Braden: Same answer on the same grounds, Mr. Chairman; same refusal to answer on the same ground.

Mr. Arens: Now, in addition to the letter attacking this committee—and we are used to it—by the Southern Conference Educational Fund, have you, as a field representative or field organizer of the Southern Conference Educational Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress?

Mr. Braden: I am afraid the question is too vague for an answer, Mr. Chairman.

Mr. Arens: I will be specific then, sir. I will display, if you please, sir, a photostatic reproduction of a letter on the letterhead of the Southern Conference Educational Fund, signed Carl and Anne Braden, field secretaries.

Mr. Braden: May we have it read into the record?

Mr. Arens: I am going to display it to you—in which, among other things, the recipient of the letter, "Dear Friend," is asked to write their Senators and Congressmen to oppose S. 654, S. 2646, and H. R. 977, all of which are security measures pending in the United States Congress.

Kindly tell this committee while you are under oath, sir, whether or not that photostatic reproduction of that letter is true and correct and valid.

Mr. Braden: I will have to read it first.

"Dear Friend"—

[fol. 163] Mr. Willis: After you read it—are you going to just read it, or will you answer the question as to whether you signed it or not; if it proves—

Mr. Braden: It will indicate from the letter that I signed it, I think, I mean whether I did or not. If it is a letter I wrote, it is bound to have my name on it.

Dear Friend:

We are writing to you because of your interest in the Kentucky "sedition" cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

There are now pending in both houses of Congress bills that would nullify this decision. We understand there is real danger that these bills will pass.

We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and

money needed for that struggle has been spent in a defensive battle.

[fol. 164] It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your two senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills may come up at any time.

Cordially yours,

CARL AND ANNE BRADEN,
Field Secretaries.

Mr. Arens: Did you sign that letter?

Mr. Braden: Our signature is on the letter.

Mr. Arens: Were you a member of the Communist Party the instant you affixed your signature to that letter?

Mr. Braden: I refuse to answer on the same ground previously stated, Mr. Chairman.

Mr. Jackson: Mr. Chairman—

Mr. Arens: Mr. Braden, are you connected in any way with the Southern Newsletter?

[fol. 165] Mr. Braden: Who is that?

(The witness conferred with his counsel.)

Mr. Arens: I might explain to you. We had a man who has been identified as a Communist—

Mr. Arens: Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South. I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

Mr. Braden: I think you are now invading freedom of the press, Mr. Arens and Mr. Chairman. I object to your invasion of the freedom of the press, and I also decline to answer the question on the same grounds. You are not only attacking integrationists, you are attacking the press.

Mr. Arens: We have no further questions, if you please, Mr. Chairman.

[fol. 166] Mr. Willis: Any questions, Governor?

Mr. Tuck: I have no questions.

Mr. Jackson: I would say anyone who labors under the delusion that the Communist press is anything close to free is certainly making a very serious mistake.

However, I think, Mr. Counsel, with reference to the letter sent out by the Southern Conference Educational Fund and signed by a number of individuals, there may conceivably be some of those who signed the letter who did not realize that it was sponsored by a Communist front. For that reason I think, in all fairness, that those who might desire, if there are any who might desire, to withdraw their names from that letter before it becomes a part of the official archives of our Committee on Un-American Activities should be given opportunity to do so on request of the committee.

Mr. Braden: Mr. Chairman, since he made charges against—

Mr. Willis: He is not making charges. He is making a statement for the record.

Mr. Braden: Southern Conference being a Communist front.

[fol. 167] Mr. Jackson: I am told the Internal Security Subcommittee of the Committee on Judiciary of the United States Senate has so characterized it.

Mr. Braden: I think we ought to be allowed to introduce in evidence a brochure showing what the Southern Conference Educational Fund is about. Give decency a chance in the South.

Mr. Arens: In view of the distinguished Congressman's observation on the Southern Conference Educational Fund, the organization which has been cited as a Communist front with which this man has a connection as an identified Com-

munist is the Emergency Civil Liberties Committee. The Southern Conference Educational Fund itself is, for all practical purposes, the successor organization to the Southern Conference for Human Welfare, which itself had been cited as a Communist front. The Senate Internal Security Subcommittee ran an investigation of the Southern Conference Educational Fund—and I say in passing that I happen to have been identified with the Internal Security Subcommittee at that time and did the interrogating of the witnesses.

The report of the Internal Security Subcommittee with reference to the Southern Conference Educational Fund concludes substantially as follows—this is not an exact quotation; it is only from memory—that an objective appraisal from the record compels the conclusion that the Southern Conference Educational Fund is, for all practical [fol. 168] purposes, operating under the same leadership and for the same objective as the Southern Conference for Human Welfare.

Mr. Braden: May we have the record show, then, Mr. Chairman that the Southern Conference Educational Fund was not specifically listed as he said—

Mr. Jackson: Very well, Mr. Chairman.

Mr. Braden: Originally.

Mr. Arens: That is one of the purposes why we wanted to interrogate you, because you are an identified Communist by a reliable, responsible witness who placed her liberty on the line and said, "While I was in the Communist Party, I knew him, to a certainty, as a member of the Communist Party conspiracy." That is you. You are now the field representative in this committee. We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing.

[fol. 169]

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

United States of America,
Northern District of Georgia. ss..

I, C. B. Meadows, Clerk of the United States District Court in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 151 pages contain a true, full, complete and correct copy of the original record and all proceedings, (except plaintiff's original physical exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 9A, 10, 11, 12, 13, 14, 15, and 16) in the matter of United States of America vs. Carl Braden No. 21757, Atlanta Division as specified in the designation of contents of record herein, and as the same remain of record and on file in the Clerk's Office of the said District Court at Atlanta, Georgia.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said District Court, at Atlanta, Georgia, this May 25, 1959.

C. B. Meadows, Clerk, United States District Court,
Northern District of Georgia, By Ruth M. Stilwell, Deputy Clerk.

(Seal)

[fol. 170]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
October 7, 1959

(omitted in printing)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 17705

CARL BRADEN, Appellant,
versus

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the
Northern District of Georgia.

OPINION—December 10, 1959

Before Hutcheson, Cameron and Jones, Circuit Judges.

Jones, Circuit Judge: The appellant, Carl Braden, was convicted of each of the six counts of an indictment charging contempt of Congress under 2 U.S.C.A. § 192,¹ arising [fol. 172] from his refusal to answer certain questions at a hearing of a Subcommittee of the Committee on Un-American Activities of the House of Representatives. He has appealed from the conviction.

Complying with a subpoena, the appellant appeared before the Subcommittee in Atlanta, Georgia. He was accom-

¹ "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

panied by two attorneys. After being sworn the appellant identified himself as Field Secretary of the Southern Conference Fund, Inc., which, he said, was "a southwide interracial organization working to bring about integration, justice and decency in the South." He was also the associate editor of the Southern Patriot, a newspaper published by the Southern Conference Educational Fund which, said the appellant, "disseminates information on integration in the South and about the people who are working for integration." The appellant testified that the subpoena of the Committee had been served on him while he was visiting in Rhode Island. In reply to a question of counsel for the Committee, he stated that he was visiting Harvey O'Connor, National Chairman of the Emergency Civil Liberties Committee. He was asked to state the point from which he departed to the State of Rhode Island. The appellant expressed the belief that the question was not pertinent to any question that the Committee might be investigating, and that the question was an invasion of his right to as-[fol. 173] sociate under the First Amendment. He declined to answer. The Committee counsel gave the appellant an explanation of the pertinency of the question, saying:

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its

duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H.R.9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

[fol.174] "In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head

of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front."

[fol. 175] The Chairman of the Subcommittee ruled that a foundation had been laid establishing the pertinency of the question and directed the appellant to answer. The appellant again refused to answer stating that his beliefs and his associations were none of the business of the Committee and asserting that his refusal to answer was "on the grounds of the first amendment to the United States Constitution, which protects the rights of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly." He declined to answer many other questions upon the same grounds; adding as an additional ground a claim that the mandate of the Committee was so vague that the subjects it was authorized to investigate could not be determined. The appellant was asked if he was in the Atlanta area in December of 1957, and he gave an affirmative answer. He was then asked, "And did you participate in a meeting here at that time?" He refused to answer and the refusal is charged as an offense by Count One of the indictment. After the appellant had testified that it was a matter of public record that the Southern Conference Educational Fund met in the American Red Cross Building in Atlanta in December, 1957, he was asked, "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" The refusal to answer this question forms the basis of Count Two of the indictment.

Committee Counsel asked the appellant, "Now sir, are you connected with the Emergency Civil Liberties Committee?" He declined to answer and this question is the subject matter of Count Three. He was asked, "Did you and Harvey O'Connor, in the course of your conferences [fol. 176] there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" The appellant's refusal to answer this question resulted in Count Four of the indictment.

The appellant was shown a letter² on the letterhead of Southern Conference Educational Fund. He admitted that it bore the signatures of his wife and himself. He was asked, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" The [fol. 177] refusal to answer this question is the charge of Count Five.

Counsel for the Committee stated to the appellant:

"Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the Committee yesterday, at which time we

² "Dear Friend:

"We are writing to you because of your interest in the Kentucky 'sedition' cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law."

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H.R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately, as the bills may come up at any time.

"Cordially yours,

"Carl and Anne Braden"

displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South."

After this statement the appellant was asked, "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern News Letter?" The appellant refused to answer this question on the ground that it was an attempted invasion of the freedom of the press as well as the grounds assigned for the refusal to answer the other questions. This refusal to answer is the basis for the charge contained in Count Six.

The appellant moved to dismiss the indictment which motion was overruled and denied. The appellant also filed a motion for a bill of particulars in which the request was made that the Government

"1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be [fol. 178] pertinent to the question under inquiry referred to in item 1 above."

There was apparently no order entered on the motion for a bill of particulars. The Government, however, filed a Bill of Particulars as to the information sought in Request Number 1 of the motion in these words:

"The question under inquiry by the Subcommittee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party

propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda.'"

No objection was made as to the sufficiency of the bill of particulars as a response to the first request nor was the court asked to require the Government to respond to the second request contained in the motion.

Following the verdict of guilty upon each of the six counts, concurrent sentences of twelve months imprisonment on each of the counts were imposed. Motions in arrest of judgment and for a new trial were made and denied.

The assertion is made on behalf of the appellant that he was not called before the Committee for any legislative purpose but rather for the purpose of harassing and [fol:179] exposing him because of his support of integration and civil rights and his opposition to the Committee and to pending legislation. Investigations can be made by the Congress only as to matters which are proper subjects for legislation by it. There is no congressional power to expose for the sake of exposure. *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273; *Barenblatt v. United States*, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115. The opening statement of the Committee Chairman showed a purpose of investigating current subversive Communist techniques in the South. Legislative purposes might well be furthered by a determination of whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system. If a Congressional Committee ascertained that Communists were attempting to create an appearance of respectability for Un-American activities by seeking the shelter of such an honored and honorable institution as the American Red Cross, that fact would be pertinent to the inquiry it was making.

There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the

Emergency Civil Liberties Committee which was stated to be a Communist front organization. The activities of that organization, with which the appellant would have been familiar if he was associated with O'Connor in the development [fol. 180] of plans and strategies, were pertinent to the investigation being made by the Committee.

We need not make any analysis of the pertinency of the questions upon which other counts of the indictment were based. The sustaining of the appellant's conviction on any of the counts would require an affirmance since concurrent sentences were imposed. *Barenblatt v. United States*, *supra*; *Davis v. United States*, 6th Cir. 1959, 269 F. 2d 357; *Estep v. United States*, 5th Cir. 1955, 223 F. 2d 19, cert. den. 350 U. S. 862, 76 S. Ct. 195, 100 L. Ed. 765; *Gilmore v. United States*, 5th Cir. 1955, 228 F. 2d 121; *Morales v. United States*, 5th Cir. 1956, 228 F. 2d 762.

While before the Committee, the appellant's refusals to answer were frequently accompanied by statements or suggestions that the Committee's purpose was the investigation of integration. But one who is known or believed to be a Communist and is suspected of being engaged in Un-American activities does not acquire immunity by adopting the role of a racial integrationist.

During the appearance of the appellant before the Committee he stated his claim of right in refusing to answer the Committee's questions by saying, "I am standing on the *Watkins*,³ *Sweezy*,⁴ *Koenigsberg*,⁵ and other decisions [fol. 181] of the Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States to private belief and association." Again he said, "I also believe it is an invasion of my right to associate under the first amendment and I therefore decline to answer." This position, taken at the Committee hearing is renewed here. It is apparent that the appellant miscon-

³ *Watkins v. United States*, *supra*.

⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311.

⁵ *Koenigsberg v. State Bar of California*, 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810, reh. den. 354 U.S. 927, 77 S. Ct. 1374, 1 L. Ed. 2d 1441.

ceived the effect of the Watkins case. That this is so is clearly demonstrated by the opinion in the Barenblatt case from which we quote these excerpts:

"Undeniably the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. When First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. . . .

"That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court; and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from [fol. 182] recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation, 'the ultimate value of any society,' *Dennis v. United States*, 341 U. S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

"We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." 360 U. S. 109, 126, 127-128, 134.

The foregoing principles are applicable and controlling here. The First Amendment does not give to the appellant any right to refuse to answer the questions which were propounded to him by the Committee.

The district court decided that the questions upon which the indictments were framed were pertinent and so instructed the jury. The appellant, at the close of the trial, objected and made the contention that the pertinency issues should have been submitted to the jury. The same contention is urged on this appeal. We have no doubt but that this question is one of law and was rightly resolved at the trial. *Sinclair v. United States*, 279 U.S. 263, 49 S. Ct. 268, 73 L. Ed. 692.

[fol. 183] Before this Court the appellant says his conviction must be reversed because, after he had made his objections to the questions put to him, he was not expressly directed to answer the questions. After the question on which the first count of the indictment was asked, the appellant said "Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?" The Chairman replied that "It is understood that you are referring to the first amendment." The Staff Director suggested that if there was to be an understanding as to the basis for refusing to answer, there might also be an understanding as to directions to the appellant to answer. The Chairman asked the appellant if he understood that he was ordered to answer and the appellant replied, "I will understand that you are directing me to answer each question in order to expedite the matter so we will not be wasting the Committee's time and everybody else's time on this." Later the Staff Director inquired whether the record was clear that in response to each refusal to answer there had been given a direction to answer, and the appellant said, "I understand. My counsel and I understand." The appellant waived the right to have a specific direction to answer each of the questions to which he made objection and which he refused to answer. He now asserts that he could not waive the requirement of being specifically directed to answer each question. It is required that the witness be ordered to answer a question, where an objection has been made or a refusal to answer has been stated. This requirement is made so that it may be

established beyond doubt, in a criminal prosecution, that [fol. 184] the refusal was intentional and deliberate. The statements of the appellant clearly showed that he and his counsel were fully informed and the request to omit the specific directions to answer was intelligently made by the appellant. He was in no way prejudiced. Due process was in no way denied. If the waiver had been made at a trial before a court we are without doubt that no assignment of error could properly be predicated upon permitting the waiver. *Smith v. United States*, 5th Cir. 1956, 234 F. 2d 385; *Beeler v. United States*, 5th Cir. 1953, 205 F. 2d 454, cert. den. 346 U. S. 877, 74 S. Ct. 130, 98 L. Ed. 385; *Hagans v. United States*, 5th Cir. 1959, 261 F. 2d 924. We see no interest of justice that calls for a different rule here. It might, though, be observed that the First Count upon which the appellant was convicted was for refusal to answer a question after being expressly ordered to give an answer. It follows, as has been stated, that if the conviction on the First Count is upheld there will be an affirmance in view of the concurrent sentences imposed.

The appellant now urges that when he appeared before the Committee the rules as announced in the Watkins opinion justified his belief that the First Amendment protected him in refusing to answer the questions of the Committee, and being so justified he did not have the criminal intent necessary to sustain a conviction for contempt. The offense is the willful refusal to comply with the order of the Committee to answer a pertinent question. The mistaken belief that the law justifies a refusal to answer is not a defense, whether the belief is induced by the misreading of a judicial [fol. 185] opinion, by the advice of counsel or otherwise. *Sinclair v. United States*, *supra*.

The appellant would have us hold that the indictment should have specified the pertinency of each question and would have us reverse his conviction for insufficiency of the indictment. A comparison of the indictment here with that by which Barenblatt was charged will show the lack of merit in this contention. Cf. *Barenblatt v. United States*, D.C. Cir. 1957, 100 App. D.C. 13, 240 F. 2d 875, 877. The appellant also urges that the trial court should have ordered a full response to the requests in the motion for a bill of particulars. We think that the appellant, if he re-

garded the bill of particulars as inadequate, should have said so in an appropriate manner before going to trial. But aside from that, we think there would have been no error if the court had expressly denied the request contained in the motion. The purpose of a bill of particulars is either to supplement the indictment in informing a defendant of facts constituting ingredients of the offense with which he is charged in order that he may prepare his defense or so to perfect the record as to bar a subsequent prosecution. 4 Wharton, Criminal Law and Procedure, 720, § 1867. Pertinency being, as has been shown, a matter of law, the manner in which the questions propounded are pertinent to the inquiry are not proper matters for a bill of particulars. *Rose v. United States*, 9th Cir. 1945, 149 F. 2d 755. It cannot be well contended that the appellant could have been twice tried for the offenses charged in the indictment. We cannot see, and the appellant does not advise us, [fol. 186] how the preparation of his defense would have been helped by any information he sought by the second part of his Motion for a Bill of Particulars. The absence of any order directing the furnishing of any further bill of particulars was not error. *Wong Tai v. United States*, 273 U. S. 77, 47 S. Ct. 300; 71 L. Ed. 545; *Kaufman v. United States*, 6th Cir. 1947, 163 F. 2d 404, cert. den. 333 U. S. 857, 68 S. Ct. 726, 92 L. Ed. 1137, reh. den. 333 U. S. 878, 68 S. Ct. 896, 92 L. Ed. 1154. Cf. *Watts v. United States*, 5th Cir. 1947, 161 F. 2d 511, cert. den. 332 U. S. 769, 68 S. Ct. 81, 92 L. Ed. 354.

Finally, the appellant took and takes the position that the Congress had no power to authorize the Committee investigations and that its Rule XI⁶ under which the investigation here challenged was conducted was so vague and

⁶ "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." H. Res. 5, 83d Cong., 1st Sess.; H. Res. 7, 86th Cong., 1st Sess.

ambiguous that it could have no constitutional validity. This contention has also been put at rest by the Supreme Court in the Barenblatt decision. In the opinion, after reviewing the history of the Committee, the Court held:

"In this framework of the Committee's history we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable [fol. 187] able, and that independently of whatever bearing the broad scope of Rule XI may have on the issue of 'pertinency' in a given investigation into Communist activities, as in *Watkins*, the Rule cannot be said to be constitutionally infirm on the score of vagueness." 360 U.S. 109, 122-123.

The quoted language is applicable here and the principle stated forecloses the appellant's contention.

We do not find any error in the judgment and sentence or in the proceedings culminating therein. The judgment and sentence are

Affirmed.

[fol. 188]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17705

CARL BRADEN,

versus

UNITED STATES OF AMERICA.

JUDGMENT—December 10, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment and sentence of the District Court in this cause be, and the same are hereby, affirmed.

[fol. 189]

IN UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
No. 17,705

CARL BRADEN, Appellant,
against
UNITED STATES OF AMERICA, Appellee.

PETITION FOR REHEARING—Filed December 29, 1959

Petitioner, Carl Braden, respectfully petitions for a rehearing in this matter decided on December 10, 1959.

In support of the petition, petitioner respectfully shows and alleges:

1. Petitioner had urged that his reliance upon *Watkins v. United States*, 354 U. S. 178, precluded a conviction under 2 U. S. C. § 192 and that the conviction was a denial of due process under the Fifth Amendment to the United States Constitution (Br. p. 2). This Court rejected that argument by citing *Sinclair v. United States*, 279 U. S. 263. We respectfully submit that *Sinclair* is not apposite and has in any event been overruled by *United States v. Murdock*, 290 U. S. 389 and succeeding cases as more particularly indicated in the briefs previously filed by Petitioner.

2. This Court, we respectfully submit, has erroneously construed *Barenblatt v. United States*, 360 U. S. 109 to give unlimited power of investigation over First Amend-[fol. 190] ment activities to the House Committee on Un-American Activities, herein referred to as the Committee. The distinctions urged in Petitioner's Reply Brief (pp. 1-3) appear to have been overlooked by this Court in the opinion herein.

3. The Court accepted as fact, hearsay and unsupported statements made by the Committee's Counsel which were offered to establish the foundation necessary to the

Committee's exercise of its subpoena power. We refer e.g. to the following statement in the Opinion:

"There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the Emergency Civil Liberties Committee which was stated to be a Communist front organization." . . . (p. 9)

4. This Court has enunciated, we respectfully submit, a most questionable doctrine that philanthropic organizations may be investigated by the Committee to determine whether they are "being used for the spread of the propaganda of a foreign dominated organization with subversive designs upon our governmental system" (Opinion, p. 9). Should such procedure receive judicial sanction it opens wide a road, presently being vigorously developed by several State Legislative Committees, to investigate as subversive (with all its accompanying damage) any organization supporting the right to racial integration as enunciated by the Supreme Court of the United States. The instant case is to our knowledge the first such use of the Federal investigative process, and to sustain it will encourage Committees purporting to exercise legislative power to discredit and destroy those agencies seeking to effectuate the supreme law of the land.

[fol. 191] 5. The Court erred in construing *Sinclair v. United States*, 279 U. S. 263, as dispositive of petitioner's right to a jury's determination of pertinency. The single directly apposite case in this decade—*United States v. Orman*, 207 F. 2d 148, was not commented upon by this Court.

6. The Court assumed that legislative purpose is proven by a mere Committee assertion to that effect (Opinion, pp. 3, 9). This assumption would eliminate the need for an actual legislative purpose previously recognized by the Supreme Court in both the *Watkins* and *Barenblatt* decisions.

7. An independent judicial analysis of the facts unaffected either by an assumption of Committee regularity or by self-serving Committee declarations would, we believe, establish that petitioner's subpoena resulted from his exercise of the constitutional right of petition relating to the Committee and to legislative projects upon which it possessed a different point of view.

Petitioner has not deemed it appropriate upon a petition for rehearing to restate the various other contentions made by him upon the appeal. He preserves every such point for reconsideration by this Court if reargument should be ordered and by the Supreme Court if a petition for certiorari should become necessary.

This is the first case involving such issues to be decided by this Court. Its importance and complexity are manifest. Related constitutional issues have been decided by a divided Court sitting *en banc* in the District of Columbia and by a divided Supreme Court, *Watkins v. United States*, 354 U. S. 178; *Barenblatt v. United States*, 360 U. S. 109. We respectfully submit that a case of first instance in this [fol. 192] Circuit might well be heard by the Court *en banc* and respectfully request that such be done.

Dated, December 28, 1959.

Respectfully submitted,

John M. Coe, Box 29, Pensacola, Florida,
Leonard B. Boudin, 25 Broad Street, New York 4,
New York,

C. Ewbank Tucker, 1625 West Kentucky St., Louis-
ville 10, Kentucky,

Conrad J. Lynn, 141 Broadway, New York 6, New
York,

Attorneys for Appellant.

CERTIFICATE OF COUNSEL

I, Leonard B. Boudin, do hereby certify that I am counsel for the petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

December 28, 1959.

Leonard B. Boudin

[fol. 193]

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Title omitted]

MINUTE ENTRY OF ORDER DENYING REHEARING—
January 12, 1960

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 199] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 200]

GOVERNMENT'S EXHIBIT No. 4

ADMITTED JAN 22 1959

Case No.: 21757

84th Congress, 2d Session - - - House Document No. 474

CONSTITUTION

JEFFERSON'S MANUAL

AND

RULES OF THE HOUSE OF
REPRESENTATIVES

OF THE UNITED STATES
EIGHTY-FIFTH CONGRESS

By

LEWIS DESCHLER, J.D., M.P.L., LL.D.
PARLIAMENTARIAN

[fol. 201]

RULE X.

STANDING COMMITTEES.

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

§ 669. Election of standing committees.

The present form of this rule was made effective Jan. 2, 1947, as a part of the Legislative Reorganization Act of 1946. That Act consolidated 44 committees of the 79th Congress into the following 19 committees. The old rule intrusting the appointment of committees to the Speaker was adopted in 1789 and amended in 1790 and in 1860 (IV, 4448-4476). Committees are now elected on motion or resolution from the floor (VIII, 2171) and it is in order to move the previous question on such motion or resolution (VIII, 2174). The motion is not divisible (Rule XVI, cl. 6) and is privileged (VIII, 2179, 2182).

§ 670. Names and numbers of the standing committees.

[fol. 202] (q) Committee on Un-American Activities, to consist of nine Members.

[fol. 203]

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation, messages, petitions, memorials, and other matters relating to the subject listed under the standing committees named below shall be referred to such committees, respectively:

§ 673. Jurisdiction of committees.

[fol. 204] 17. COMMITTEE ON UN-AMERICAN ACTIVITIES.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of, (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

This committee was established as a standing committee on January 3, 1945. It has jurisdiction of resolutions to define communism (Mar. 20, 1947, p. 2315, 2343) and also bills to protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations (Subversive Activities Control Act of 1950).

[fol. 206] 25 (a) The rules of the House are the rules of it committees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in committees. Committees may adopt additional rules not inconsistent therewith.

This paragraph was adopted December 8, 1931 (VIII, 2215) and amended March 23, 1955, pp. 3569, 3585.

A committee may adopt rules under which it will exercise its functions (I, 707; III, 1841, 1842; VIII, 2214) and may appoint subcommittees (VI, 532) which should include majority and minority representation (IV, 4551) and confer on them powers delegated to the committee itself (VI, 532) but express authority is given subcommittees by the House (III, 1754-1759, 1801, 2499, 2504, 2508, 2517; IV, 4548).

(b) Each committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

This provision from Sec. 133 (b) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

[fol. 207] (c) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records. Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee.

This provision from Sec. 202 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(d) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

This provision from Sec. 133 (c) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24. It is sufficient authority for

the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn Feb. 22, 1950, p. 2162).

(e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

This provision from Sec. 133 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

The point of order that a bill was reported from a committee without a formal meeting and a quorum present comes too late if debate has started on the bill in the House (VIII, 2223; Feb. 24, 1947, p. 1374).

(f) Each committee shall, so far as practicable, require all witnesses appearing before it to file in advance written [fol. 208] statements of their proposed testimony, and to limit their oral presentation to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

This provision from Sec. 133 (e) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(g) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

This provision from Sec. 133 (f) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(h) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

Alleged perjurious testimony elicited from a witness during a period when less than a quorum of the committee was in attendance is not perjury, for under such circumstances the committee is not a "competent tribunal" (*Christoffel v. U. S.*, 338 U. S. 84).

(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(j) A copy of the committee rules, if any, and paragraph 25 of rule XI of the House of Representatives shall be made available to the witness.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

[fol. 209] (k) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(1) receive such evidence or testimony in executive session;

(2) afford such person an opportunity voluntarily to appear as a witness; and

(3) receive and dispose of requests from such person to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(n) Except as provided in paragraph (m), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(o) ~~No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.~~

This paragraph was adopted March 23, 1955, pp. 3569, 3585. *

{fol. 210} (p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(q) Upon payment of the low cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

This provision from Sec. 136 of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

[fol. 211]

GOVERNMENT'S EXHIBIT No. 5

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERK

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the following Members constitute the Committee on Un-American Activities of the House of Representatives as is evidenced in the Journal of the House of Representatives of January 10, 1957, January 16, 1957, and January 16, 1958: Francis E. Walter (Chairman), of Pennsylvania, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, Edwin E. Willis, of Louisiana, William M. Tuck, of Virginia, Bernard W. (Pat) Kearney, of New York, Donald L. Jackson, of California, Gordon H. Scherer, of Ohio, and Robert J. McIntosh, of Michigan.

(Seal)

In witness whereof I hereunto affix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this fourteenth day of August anno Domini one thousand nine hundred and fifty-eight.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives

[fol. 212]

GOVERNMENT'S EXHIBIT No. 6

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct excerpt from the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of May 21, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 213]

COMMITTEE ON UN-AMERICAN ACTIVITIES
May 21, 1958

The Committee on Un-American Activities met in executive session on Wednesday, May 21, 1958, in Room 225, Old House Office Building at 10:00 A.M., pursuant to notice. The following members were present:

Francis E. Walter, Chairman	Gordon H. Scherer
Morgan M. Moulder	Robert J. McIntosh
Clyde Doyle	
William M. Tuck (entered at 10:25 A.M.)	

Also present were Richard Arens, Staff Director; Frank S. Tavenner, Jr., Counsel; Gwendolyn L. Lewis, Administrative Assistant to the Staff Director; and Juliette P. Joray, Recording Clerk. Mr. Walter Besterman, Legislative Assistant to the Subcommittee on Immigration and Naturalization was also present.

BE IT RESOLVED, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a). To obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and

advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

[fol. 214] 3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

Signed: Francis E. Walter
Chairman

Signed: Juliette P. Joray
Clerk

[fol. 215]

GOVERNMENT'S EXHIBIT No. 7

ADMITTED JAN 22 1959

Case No. 21757

RALPH B. ROBERTS
CLERK

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct excerpt from the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of January 22, 1957.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 216]

COMMITTEE ON UN-AMERICAN ACTIVITIES
January 22, 1957

The Committee on Un-American Activities met in executive session on Tuesday, January 22, 1957, in room 225 House Office Building. The following members were present.

Francis E. Walter, Chairman	Bernard W. Kearney
Morgan M. Moulder	Donald L. Jackson
Clyde Doyle	Gordon H. Scherer
Edwin E. Willis	Robert J. McIntosh

Also present were Richard Arens, Director; Frank S. Tavenner, Jr., Counsel; and Juliette P. Joray, Clerk.

On motion of Mr. Doyle and seconded by Mr. Jackson, the following resolution was unanimously adopted:

BE IT RESOLVED, That the Chairman be authorized and empowered from time to time to appoint subcommittees, composed of three or more members of the Committee on Un-American Activities, at least one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the Committee as a whole is authorized to perform.

(Signed) Francis E. Walter
Chairman

(Signed) JULIETTE P. JORAY
Clerk

[fol. 217]

GOVERNMENT'S EXHIBIT No. 8

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of an Order issued by Francis E. Walter, Chairman, Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, under date of June 24, 1958, appointing members of a subcommittee, the original of which is in an order book, part of the files of the House of Representatives which are under the control of the Clerk.

(Seal)

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 218]

June 24, 1958

To: Mr. Richard Arens
Staff Director
House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Com-

mittee on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958, at 10:00 A.M., on subjects under investigation by the Committee and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

Signed: Francis E. Walter

Francis E. Walter

Chairman

Committee on Un-American Activities

[fol. 219]

GOVERNMENT'S EXHIBIT No. 10

Clerk's Note

In lieu of printing Government's Exhibit No. 10, counsel have stipulated that one refer to and use the printed pamphlet identified as Government's Exhibit No. 1, page 71 of the printed record in the case of *Frank Wilkinson v. United States*, No. 37, October Term, 1960.

[fol. 220]

GOVERNMENT'S EXHIBIT No. 11

ADMITTED JAN 22 1959

Case No: 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of the Minutes of a subcommittee of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of August 8, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and fifty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, U.S.

[fol. 221]

COMMITTEE ON UN-AMERICAN ACTIVITIES
August 8, 1958

The subcommittee of the Committee on Un-American Activities, composed of Messrs. Edwin E. Willis, Chairman, William M. Tuck and Donald L. Jackson as associate members, appointed by the Chairman as a subcommittee to conduct hearings in Atlanta, Georgia beginning July 29, 1958, met in the Old House Office Building, Room 225, on August 8, 1958, at 10:00 A.M., pursuant to notice.

The following members were present:

Edwin E. Willis, Chairman Donald J. Jackson
William M. Tuck

The subcommittee was called to order by the Chairman who stated the purpose of the meeting was to consider what action the subcommittee would take regarding the refusal of certain witnesses to answer material questions propounded to them in the course of the hearings conducted by the said subcommittee in Atlanta, Georgia, beginning on the 29th day of July, 1958, and what recommendation it would make regarding the citation of any such witness for contempt of the House of Representatives.

After full consideration of the testimony of the witnesses given at the said hearing in Atlanta, Georgia, a motion was made by Mr. Jackson, seconded by Mr. Willis, and unanimously adopted, that a report of the facts relating to the refusal of Carl Braden and Frank Wilkinson to answer questions before the said subcommittee at the hearing aforesaid be referred and submitted to the Committee on Un-American Activities as a whole, with the recommendation that a report of the facts relating to the refusal of said witnesses to answer material questions, together with all of the facts in connection therewith, be referred to the House of Representatives, with the recommendation that the said witnesses be cited for contempt of the House of Representatives for their refusal to answer questions therein set forth, to the end that they may be proceeded against in the manner and form provided by law.

Signed: E. E. Willis
Subcommittee Chairman

Signed: Juliette P. Joray
Recording Clerk

[fol. 222]

GOVERNMENT'S EXHIBIT No. 12

ADMITTED JAN 22 1959

Case No. 21757

RALPH R. ROBERTS
CLERKOFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a true and correct copy of the Minutes of the Committee on Un-American Activities of the House of Representatives of the Eighty-fifth Congress, of August 8, 1958.

(Seal) In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this fourteenth day of January, anno Domini one thousand nine hundred and ffty-nine.

/s/ RALPH R. ROBERTS
Clerk of the House of Representatives, US

[fol. 223]

COMMITTEE ON UN-AMERICAN ACTIVITIES
August 8, 1958

The Committee on Un-American Activities met in executive session on August 8, 1958, at 10:05 A.M., in Room 225, Old House Office Building, pursuant to notice. The following members were present:

Francis E. Walter, Chairman	Donald L. Jackson
Morgan M. Moulder	Gordon H. Scherer
Clyde Doyle	
Edwin E. Willis	
William M. Tuck	

Also present were Richard Arens, Staff Director, and his Administrative Assistant, Gwendolyn L. Lewis; Frank S. Tavenner, Counsel and Juliette P. Joray, Recording Clerk.

The report of the facts relating to the refusal of Carl Braden to answer material questions was submitted to the Committee upon which a motion was made by Mr. Scherer, seconded by Mr. Doyle, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Carl Braden to answer material questions before the said subcommittee at the hearing conducted before it in Atlanta, Georgia, on the 30th day of July, 1958, be and the same is hereby approved and adopted, and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives, with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions, to the end that he may be proceeded against in the manner and form provided by law.

The report of the facts relating to the refusal of Frank Wilkinson to answer material questions was submitted to the Committee, upon which a motion was made by Mr. Scherer, seconded by Mr. Doyle, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Frank Wilkinson to answer material questions before the said subcommittee at the hearing conducted before it in Atlanta, Georgia, on the 30th day of July, 1958, be and the same is hereby approved and adopted, and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives, with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions, to the end that he may be proceeded against in the manner and form provided by law.

The meeting adjourned at 10:25 A.M.

Signed: Francis E. Walter
Chairman

Signed: Juliette P. Joray,
Recording Clerk

[fol. 224]

GOVERNMENT'S EXHIBIT No. 13

ADMITTED JAN 22 1959

Case No. 21757

85TH CONGRESS.
2D SESSION

H. RES. 686

IN THE HOUSE OF REPRESENTATIVES

AUGUST 13, 1958

Mr. WALTER submitted the following resolution; which was
considered and agreed to

RESOLUTION

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Carl Braden to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the Northern District of Georgia, to the end that the said Carl Braden may be proceeded against in the manner and form provided by law.

(Seal) I, Ralph R. Roberts, Clerk of the House of Representatives hereby certify that the above Resolution is a true and correct copy as adopted by the House of Representatives on August 13, 1958.

/s/ RALPH R. ROBERTS
RALPH R. ROBERTS

Clerk, U. S. House of Representatives

[fol. 225]

85TH CONGRESS
2D SESSION

H. RES. 686

RESOLUTION**Citing Carl Braden for contempt.**

By Mr. WALTER

AUGUST 13, 1958
Considered and agreed to

[fol. 226]

GOVERNMENT'S EXHIBIT NO. 14**ADMITTED JAN 22 1959****Case No. 21757****SAM RAYBURN**
4TH DISTRICT, TEXAS**THE SPEAKER'S ROOMS**
HOUSE OF REPRESENTATIVES U. S.
WASHINGTON, D. C.**The United States Attorney**
Northern District of Georgia

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 686, Eighty-fifth Congress, hereby certifies to you the refusal of Carl Braden to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities of the House of Representatives conducting an investigation authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-fifth Congress, as is fully shown by the certified copy of the report (House Report 2584) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this fourteenth day of August 1958.

/s/ SAM RAYBURN

Speaker of the House of Representatives

(Seal)

Attest

/s/ RALPH R. ROBERTS

Clerk of the House of Representatives

[fol. 227]

SUPREME COURT OF THE UNITED STATES

No., October Term, 1959.

CARL BRADEN, Petitioner

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—February 2, 1960.

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 12, 1960.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 2nd day of February, 1960.

[fol. 228]

SUPREME COURT OF THE UNITED STATES

No. 779, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—April 25, ¹⁹⁶⁰~~1959~~

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is set for argument immediately preceding No. 703.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U.S.

FILED

MAR 10 1950

JAMES R. BROWNING, Clerk

Supreme Court of the United States

October Term, 1959

No. **279 54**

CARL BRADEN,

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOHN M. COE,
Box 29,
Pensacola, Florida,

LEONARD B. BOUDIN,
VICTOR RABINOWITZ,
25 Broad Street,
New York 4, New York,

C. EWBANK TUCKER,
1625 West Kentucky Street,
Louisville 10, Kentucky,

CONRAD J. LYNN,
141 Broadway,
New York 6, New York;

Attorneys for Petitioner.

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Supreme Court of the United States

October Term, 1959

No.

CARL BRADEN;

Petitioner,

against

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CARL BRADEN respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on December 10, 1959, affirming petitioner's judgment of conviction in the United States District Court for the Northern District of Georgia.

Opinions Below

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 171) is reported at 272 F. 2d 653 and appears in Appendix A. *infra*, p. 22.

Jurisdiction

The judgment of the Court of Appeals was entered on December 10, 1959 (R. 188, Appendix B, *infra*, p. 36). A petition for rehearing was denied on January 12, 1960 (R. 193). On February 2, 1960, Mr. Justice Black extended the time to file this petition to March 12, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Questions Presented

1. Whether petitioner's refusal to answer certain questions of the House Committee on Un-American Activities (herein called the Committee), in explicit reliance upon this Court's decision in *Watkins v. United States*, 354 U. S. 178, constituted a violation of 2 U. S. C. § 192 and, if so, whether he was denied due process under the Fifth Amendment.

2. Whether the Committee was authorized by statute, rule or Constitution to subpoena and question petitioner

(i) in retaliation for his criticism of it,

(ii) to determine whether to "cite" certain organizations as "subversive",

(iii) because of his public opposition to legislative proposals favored by the Committee, and

(iv) to assess his motives in working for integration and civil rights.

3. Whether the questions set forth in the indictment were pertinent to the inquiry and whether the issue of pertinency should have been left to the jury.

4. Whether the Government sustained the burden imposed upon it by this Court in *Barenblatt v. United States*, 360 U. S. 109, and *Sweezy v. New Hampshire*, 354 U. S. 234, of showing why petitioner's right of privacy must yield to subordinating governmental interests.

5. Whether in the light of the Committee's total history, this Court should not reconsider its decision in *Barenblatt* and conclude that H. Res. 5, 85th Cong., violates the First Amendment.

6. Whether H. Res. 5, 85th Cong., meets the requirements of clarity for criminal statutes imposed by the due process clause.

7. Whether petitioner was properly convicted under 2 U. S. C. § 192 and the Federal Rules of Criminal Procedure, Rule 7, by reason of the insufficiency of the indictment, the inadequacy of the bill of particulars, and the absence of proof as to a Committee direction to testify.

Constitutional Provisions, Statutes and Rules Involved

The constitutional provisions involved are Article I, Sections 1 and 9, clause 3; Article III, Section 1; and the First, Fifth, Sixth, Ninth and Tenth Amendments.

The statutes involved are 2 U. S. C. § 192 (52 Stat. 942), as amended, Public Law 601, Section 121, 79th Cong., 2d Sess. (60 Stat. 828) and the relevant portions of Rule XI of the Rules of the House of Representatives, H. Res. 5, 85th Cong., 1st Sess. Rule 7(c) and (f) of the Federal Rules of Criminal Procedure is also involved. These statutes and the Rule are reproduced in Appendix C, *infra*, p. 37.

Statement of the Case

Petitioner Carl Braden is Field Secretary and Editor of the Southern Conference Educational Fund, Inc. (herein referred to as the Southern Conference) (R. 132). That organization's objective is to secure justice for the Negro people of the South in accordance with the requirements of the Fourteenth and Fifteenth Amendments and this Court's decisions in *Brown v. Board of Education*, 347 U. S. 483 and *Shelley v. Kraemer*, 334 U. S. 1 (*Ibid.*)

In 1954 petitioner was convicted of sedition in Kentucky as a direct result of helping a Negro family to purchase a house in a segregated suburb of Louisville. (See Emerson and Haber, *1 Political and Civil Rights in the United States* (2d Ed., 1958) 445-446.)

The House Committee supplied the State prosecuting attorney with advice and nine of his key witnesses. (See Transcript of Evidence filed as part of Record on Appeal in *Braden v. Commonwealth*, 291 S. W. 2d 843 [Kentucky C. A. 1956] pp. 43-157, 433-533, 547-768, 830-857, 866-889, 955-1009, 1019-1054, 1108-1133, 1138-1143, 1167-1200, 1210-1230, 1368, 1473-1474). The charges against petitioner and his wife were subsequently dismissed (*Braden v. Commonwealth*, *supra*) following this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497.

In July 1958 the Committee subpoenaed petitioner and his wife while they and their two small children were vacationing in Rhode Island at the seashore home of Mr. Harvey O'Connor, a writer and National Chairman of the Emergency Civil Liberties Committee (herein referred to as ECLC) (R. 58-59, 135), a national organization concerned with the protection of civil liberties, particularly in the courts.¹

The subpoena directed petitioner to appear in Atlanta, Georgia to testify at hearings conducted by the Committee. Petitioner duly appeared and identified himself and was examined by Committee counsel (R. 132-133).

The Committee inquired as to a meeting of the Southern Conference's Board of Directors in December 1957 in Atlanta, Georgia at the American Red Cross Building (R. 152, 158-159). There is no indication that anything untoward occurred at that meeting. Nevertheless, the Committee inquired:

"And did you participate in a meeting here at that time?" (Count 1; R. 154)

¹ Mr. O'Connor is a well known writer of such biographies as *Mellon's Millions* and books on the oil industry. ECLC, a non-political organization of scholars, lawyers and businessmen, has supported such litigation as *Abramowitz v. Brucker*, 355 U. S. 579 and *Kent & Biehl v. Dulles*, 357 U. S. 116.

"Who solicited the quarters to be made available to the Southern Conference Educational Fund?" (Count 2; R. 159)

The Committee then examined petitioner with respect to ECLC, apparently on the basis of his family's vacation in Rhode Island (R. 132). Petitioner is not and never has been connected with the ECLC although his wife is a member of its National Council.² Thus petitioner was asked:

"Are you connected with the Emergency Civil Liberties Committee?" (Count 3; R. 160)

and

"Did you and Harvey O'Connor in the course of your conference there in Rhode Island develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" (Count 4; R. 161)

The Committee severely criticized petitioner for a letter to the public opposing legislation which it supported. Thus, it produced a letter on the stationery of the Southern Conference signed by petitioner and his wife asking their fellow citizens—in the words of the Committee's counsel—

"to write their Senators and Congressmen to oppose S. 654, S. 2646 and H.R. 977, all of which are security measures pending in the United States Congress." (R. 71)

These bills were directed against this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497 (*supra*, p. 4).

The Committee then inquired:

"Were you a member of the Communist Party the instant you affixed your signature to that letter?" (Count 5; R. 73)

² The Committee's publications show prior knowledge of ECLC's membership. See e.g. *Operation Abolition*, *infra*, note 8, *passim*.

It interrogated petitioner with respect to an open letter to Congressmen allegedly prepared by him and signed by two hundred prominent Southern Negroes³ (R. 145-148). This letter requested the recipients:

"to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood." (R. 81, 148)

Finally, the Committee turned to the subject of the *Southern Newsletter*, a periodical not otherwise identified (R. 165):

"I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the *Southern Newsletter*?" (Count 6; R. 7, 165).

Petitioner declined to answer the foregoing six questions because he believed that under this Court's decision in *Watkins v. United States*, 354 U. S. 178, the questions involved his rights under the First Amendment guarantees of freedom of association, belief and speech (R. 136, 139-142). He also questioned the Committee's jurisdiction and the pertinency of the questions, and he asserted his right of petition (R. 140). Except in connection with the first question (Count 1; R. 6, 154), the Committee made no determination as to the validity of objections and issued no direction to answer⁴ (R. 139).

Petitioner was indicted on December 2, 1958 under 2 U. S. C. § 192 (R. 6). He pleaded not guilty (R. 11); his

³ The date of petitioner's subpoena is the same as the date of that letter which was in circulation for signatures some time before it was filed (R. 81).

⁴ The Court below was of the opinion that petitioner had waived the right to Committee consideration of each objection by an understanding that no direction would be required (R. 183-184; as to this, see *infra*, pp. 19-20).

motion to dismiss the indictment was denied (R. 8-9, 13). A bill of particulars described the subject matter of the investigation as follows:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda." (R. 12)

The Government failed to give petitioner a bill of particulars as to "the manner in which each of the questions" set forth in the indictment "is alleged to be pertinent to the question under inquiry" (R. 10).

Petitioner was tried before a jury. His motion for judgment of acquittal was denied (R. 83-84). He excepted to the Court's charge and the jury returned a verdict of guilty upon all six counts (R. 6, 111-112).

Petitioner's motion in arrest of judgment was denied (R. 113). He was sentenced to twelve months upon each count, the execution of sentences to run concurrently (R. 114-115) and he was continued upon bond in the sum of \$1,000 (*ibid.*).

Subsequently, petitioner filed a motion for a new trial (R. 115-117) which was denied. He appealed to the Court of Appeals on March 18, 1959 raising all of the questions presented herein (R. 117-119). On December 10, 1959 the Court of Appeals affirmed the judgment of conviction (R. 188).

Petitioner filed a petition for rehearing by the Court *en banc* (R. 189-192) on December 29, 1959. The petition was denied on January 12, 1960 (R. 193). Subsequently the Court of Appeals entered orders staying issuance of the mandate pending certiorari (R. 198).⁵

⁵ The order of January 18, 1960 (R. 198) stayed the mandate to February 11, 1960; a second order, on February 12, 1960, stayed it to March 19, 1960 and until the final disposition of the cause.

Reasons for Granting the Writ

1. There is presented to this Court for the first time in its history the question of whether explicit and reasonable reliance upon a decision of the Court can constitute criminal contempt of Congress under 2 U. S. C. § 192.

When petitioner appeared before the House Committee on July 30, 1958 he expressly relied upon this Court's decision in the *Watkins* case rendered on June 17, 1957 (R. 141-142). In that case this Court emphasized the vagueness of the Committee's mandate, particularly as applied in criminal proceedings based upon inquiries into the exercise of the rights of speech, assembly and association (354 U. S. 178, 202, 203, 205).

Five members of this Court subscribed to the Chief Justice's opinion (354 U. S. at 216). Mr. Justice Frankfurter, concurring, questioned whether "the actual scope of the inquiry that the Committee was *authorized* to conduct and the relevance of the questions to that inquiry" were "luminous at the time when asked" (italics added), 354 U. S. at 217.

In the later case of *Barenblatt v. United States*, 360 U. S. 109, decided subsequent to petitioner's appearance before the Committee, a majority of the Court (with a different composition) decided otherwise, giving a narrower construction to the holding in *Watkins*. At least three members of the Court disagreed with this construction, 360 U. S. at 134.

Petitioner had no greater reason than this Court's minority to anticipate the *Barenblatt* decision. That he acted not unreasonably is apparent from the Chief Justice's opinion in *Watkins*, the dissenting opinion of Mr. Justice Black in *Barenblatt*, Judge Youngdahl's opinion in *United States v. Peck*, 154 F. Supp. 603 (D. D. C., 1957) and the vast literature on the subject. See e.g., Fleischmann, *Watkins v. United States and Congressional Power of Investigation*, 9 Hastings L. R. 157, and *Comments in*

71 Harvard L. R. 141, 56 Michigan L. R. 272, 24 U. of Chicago L. R. 740, 33 Temple L. Q. 108, 36 North Carolina L. R. 479.

Petitioner's reliance upon *Watkins* negated the criminal intent required by 2 U. S. C. § 192. That section "like the ordinary federal criminal statute requires a criminal intent—in this instance, a deliberate, intentional refusal to answer." *Quinn v. United States*, 349 U. S. 155, 165; see *Emspak v. United States*, 349 U. S. 190, 202; *United States v. Lamont*, 18 F. R. D. 27, aff'd 236 F. 2d 312.

The Court below sought to dispose of this point by citing *Sinclair v. United States*, 279 U. S. 263 (R. 184-185), involving reliance upon the advice of counsel, a notoriously thin reed. Analysis will show that *Sinclair* is inapplicable because it involved an admittedly clear congressional mandate.⁶ Further, where First Amendment rights are involved this Court has recently imposed the very requirement of *scienter* or more, *mens rea*, which we urge here. *Smith v. People of the State of California*, — U. S. —, 80 S. Ct. 215.

Consistently since *Sinclair* this Court has shown greater sympathy for those who must, at their peril, pick their way through the tangled web of constitutional law. *United States v. Murdock*, 290 U. S. 389; *Screws v. United States*, 325 U. S. 91; and *Raley v. Ohio*, 360 U. S. 423. The decision below cannot be reconciled with the *raison d'être* of these three decisions, that failure to comply with a statutory criterion of conduct dependent upon an interpretation of constitutional law is criminal only if "done with a bad purpose." *United States v. Murdock*, 290 U. S.

⁶ The cases cited in *Sinclair*, such as *Armour Packing Co. v. United States*, 209 U. S. 56 and *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20 involved precise statutes qualitatively different from the congressional mandate here in issue.

at 394. To hold otherwise would distort the fair meaning of the statute, 2 U. S. C. § 192, and would deny due process to the petitioner.

2. Petitioner's conviction presents the important question as to whether the Committee is authorized by statute, rule or Constitution to subpoena a witness for clearly non-legislative purposes (*supra*, p. 2). We treat them separately since a combination of lawful and unlawful purposes would render the investigation invalid. Cf. *Remington Rand v. National Labor Relations Board*, 94 F. 2d 862, 872 (C. A. 2, 1938), *cert. den.* 304 U. S. 576.

(i) This case is part of a recently developing pattern of the Committee's use of its subpoena power to stifle its critics. Petitioner was examined concerning a petition to the Congress signed by "[t]wo hundred Negro leaders in the South" (R. 145) opposing its Atlanta hearings (R. 145)⁷ and his association with the Chairman of the Emergency Civil Liberties Committee, an organization which has exchanged extensive criticism with the House Committee⁸ (R. 33, 135-136, 160-161).

Another critic of the Committee, Frank Wilkinson, was subpoenaed solely because he had come to Atlanta to express his opposition to the Committee. *Wilkinson v. United States*, 272 F. 2d 783, *pet. pend.* Oct. Term 1959, No. 703. The Court below has held it proper for the Committee to subpoena one "engaged in aggressive opposition to the continued functioning of the Committee" (*Id.* at 787).

More recently the Committee subpoenaed Harvey O'Connor, ECLC's Chairman, because he was about to deliver a public speech critical of the Committee (Hearings House Committee on Un-American Activities, 85th Cong., 2d Sess. on *Communist Infiltration and Activities in Newark, N. J.* (1958), pp. 2757 *et seq.*) and indicted him for

⁷ The full letter appears at R. 147-148.

⁸ See e.g. the Committee's pamphlet entitled *Operation Abolition* (Nov. 8, 1957), an attack upon its critics.

fail to appear. *United States v. O'Connor* (D. N. J. Crim. No. 232-59). The Committee charged that Mr. O'Connor "intended nevertheless to discredit and to suggest a defiance of the Committee" (*Id.* at 2900) and that petitioner herein "had about the same things in mind, but he at least appeared" (*Ibid.*).⁹

Lèse majesté is not yet a substitute for legislative purpose. This is a far cry from this Court's decision in *McGrain v. Daugherty*, 273 U. S. 135, and from the reasoning in Dean Landis' landmark article, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926). Petitioner's case presents for the first time in this Court an issue critical to the democratic process—the extent to which Congress intended and the Constitution permits use of the power to subpoena and examine the sovereign people in retaliation for their expressed criticism of certain elected officials.

(ii) The second non-legislative purpose was to determine whether there was "sufficient quantity of information for the Committee to itself cite the Emergency Civil Liberties Committee" as a subversive organization (R. 49, 52). Even if "citation" were a governmental function under our Constitution (*Cf. Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123; *Communist Party v. Subversive Activities Control Board*, Oct. Term 1959, No. 537), such a "direct condemnation by the legislature without any judicial action" [Chafee, *Three Human Rights in the Constitution* (1956) 93], is a bill of attainder completely outside the legislative process. See *Ex parte Garland*, 71 U. S. 333; *United States v. Lovett*, 328 U. S. 303.¹⁰

⁹ These quotations are also to be found in the Committee's unnumbered mimeographed report recommending Mr. O'Connor's contempt citation.

¹⁰ *Cf. Methodist Federation of Social Action v. Eastland*, 141 F. Supp. 729, where the majority of a statutory court declined to decide the bill of attainder issue because the remedy sought was an injunction against the Government; see particularly the scholarly dissenting opinion of Judge Wilkins, 141 F. Supp. at 732.

(iii) The Committee claims the right of testimonial compulsion to investigate "political pressure, or attempted political pressure, on the United States Congress with respect to security measures pending in the Congress". (R. 70). This is a gross distortion of the constitutional relationship between the citizen and the State. "Un-American propaganda activities", H. Res. 5, 85th Cong., 1st Sess., are quite different from such "attempted political pressure"; see *United States v. Josephson*, 165 F. 2d 82, 87-88, *cert. den.* 333 U. S. 838, *reh. den.* 333 U. S. 858). The first judicial support of this broad Committee power is found in this and the *Wilkinson* cases. Indeed the Court below so clearly regarded petitioner's opposition to pending legislation as a justification for the retaliatory subpoena that it reproduced the entire letter of opposition in the opinion, *infra*, Appendix A, pp. 26-27). This case thus presents for the first time in this Court since *United States v. Rumely*, 345 U. S. 41, and far more sharply and unavoidably, the important issue of whether the Congress intended and the Constitution permits this punitive use of the power to subpoena and cross-examine private citizens.

To read the House Committee's mandate so broadly would "violate the freedoms guaranteed by the First Amendment—freedom to speak, publish and petition the Government," *United States v. Harriss*, 347 U. S. 612, 625. The decision below is, in this respect, in conflict in principle with the *Harriss*, *Josephson* and *Rumely* cases.

(iv) The Committee's extraordinary claim of power to investigate petitioner's *motives* in supporting integration and civil rights (R. 136, 150, 156, 179) would establish an equally pernicious limitation upon the right of citizens to associate, petition and speak. The Court below agreed that the Committee could investigate "whether organizations

ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system" (R. 179).

Increasingly, since *Brown v. Board of Education*, *supra*, governmental bodies have attempted such censorship in the guise of registration laws and legislative investigations. See *Shelton v. McKinley*, Oct. Term 1959, No. 541; *National Assn. for the Advancement of Colored People v. Alabama*, 357 U. S. 449; *Scull v. Virginia*, 359 U. S. 344; *Bates v. City of Little Rock*, Oct. Term 1959, No. 41, 28 L. W. 4101; Public Hearings of the State of Louisiana Joint Legislative Committee, *Subversion in Racial Unrest*, March 6-9, 1957.¹¹ The decision below would accomplish this very result. It is also in conflict in principle with this Court's decision in *De Jonge v. Oregon*, 299 U. S. 353, protecting the exercise of constitutional rights regardless of challenged auspices.

3. The decision below raises two important questions concerning the meaning and enforcement of the pertinency requirement of 2 U. S. C. § 192.

(a) There was no claim that petitioner was connected with, or that any question related to "colonization and infiltration" in basic industries or to the entry of "foreign Communist Party propaganda" (R. 12). Accordingly, the Government was required to prove pertinency to the remaining item in the bill of particulars, "Communist Party propaganda activities in the South" (*ibid.*).

Petitioner was not asked a single question on the subject. The petition to Congress in opposition to the Committee (R. 79-81) and the letter to the public in opposition to pending legislation (R. 71-72) cannot be described rationally as "Communist Party propaganda activities." In-

¹¹ Other relevant material is documented in *Scull v. Virginia*, *supra*, Petitioner's Brief, pp. 41-75.

deed, there is no evidence whatsoever of Communist propaganda activities by the Southern Conference or the ECLC. The distinguished sponsorship and the creditable work of the two organizations working respectively for civil rights and civil liberties are a matter of public record. The Government was silent as to the nature of the Southern News Letter although it appears to be a journal of opinion favorable to integration (R. 165). Constitutional rights cannot be lost because of the unsupported opinion of Committee counsel which the Court below evidently accepted as evidence (see *e.g.* R. 179-180).

In contrast to *Barenblatt*, there was no investigation here into Communist Party membership or testimony as to the nature of the Communist Party or as to petitioner's connections with it. While reserving our objections, *infra*, pp. 16-18, to the *Barenblatt* doctrine, it is clear that it does not establish pertinency in situations like the instant one. The one question relating to the Communist Party—*i.e.* membership at the time of signing a public letter opposing pending legislation—was not pertinent if *De Jonge v. Oregon*, *supra*, is still the law. Petitioner's situation is akin to that of Professor Sweezy where the claim of Communist infiltration into the Progressive Party was held not to justify the inquiry into recognizedly lawful activities. *Sweezy v. New Hampshire*, 354 U. S. 234.

(b) The Court below approved the trial court's charge to the jury that the evidence established the element of pertinency (R. 103, 179-180). Under the Sixth Amendment, pertinency, like every element of a crime, is a matter for determination by the jury. Such was the holding of the Third Circuit in *United States v. Orman*, 207 F. 2d 148, 156, where, as here, "evidence *aliunde* was introduced to prove pertinency." This Court's decision in *Sinclair v. United States*, *supra*, was correctly distinguished in *Orman* as not involving the weight of evidence. The conflict between the Third and Fifth Circuits on this point should be

resolved by this Court in view of the large number of pending contempt cases and this Court's ultimate responsibility for the uniform administration of federal criminal law. If *Sinclair* were deemed applicable to petitioner, reconsideration is required in view of the Sixth Amendment.

4. In *Barenblatt* this Court assumed the difficult function of balancing "the competing private and public interest at stake" (360 U. S. at 126) in the kind of investigation involved herein. If that balancing doctrine is to remain (see *infra*, p. 16), a scrutiny of the record will show here, as in *Sweezy v. New Hampshire*, *supra*, that the questioning "was too far removed from the premises on which the constitutionality of the State's investigation had to depend" to withstand attack under the First Amendment. See *Barenblatt v. United States*, 360 U. S. 109, 129. The Southern Conference, ECLC and the Southern Newsletter are entitled to the same protection which this Court in *Sweezy* gave to the Progressive Party. Public communications with the electorate (R. 71) or Congressmen (R. 147, 148) are not a legitimate basis for investigation of the writers, unless the constitutional right of petition is to be drastically circumscribed.

In *Barenblatt* this Court upheld an inquiry into "his participation in or knowledge of alleged Communist Party activities at educational institutions," 360 U. S. at 115. The Court passed only on the propriety of questions relating to Barenblatt's alleged membership in the Communist Party. In *Barenblatt*, this Court recited prior testimony as to the nature of the Communist Party and his alleged participation in its activities, 360 U. S. at 114. It concluded that "petitioner's appearance as a witness [did not] follow from indiscriminate dragnet procedures lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee," 360 U. S. at 134. *In the instant case no such evidence was presented at the Committee hearing or the trial below.* Accordingly, novel questions

of considerable importance are presented as to (i) the scope of the Congressional investigating function, (ii) the citizen's right of privacy and (iii) the nature and extent of the "probable cause" required in cases of this type. *Cf. Henry v. United States*, 361 U. S. 98.

5. In *Barenblatt* this Court held that the Committee's mandate did not violate the First Amendment. Petitioner is prepared to show what was only attempted *en passant* in *Barenblatt* and *Watkins*, that the Committee's mandate, as applied since its creation, has violated the First Amendment and has been used for exposure rather than for legislation. This showing would include the following:

(a) An infinitesimal number of bills are referred to, considered by and reported by this Committee.¹² Virtually all the legislative work for which the Committee claims credit is the product of the Judiciary and the Foreign Affairs Committees.¹³

(b) This Committee conducts hearings on subjects clearly within the jurisdiction of other committees, even where such committees have already held hearings. *Cf. Hearings on H.R. 9991 (Passports, Denial and Review) 84th Cong. conducted by the Judiciary Committee on May 10 and*

12.

Bills referred to House Committee on Un-American Activities	Total Number of Bills Referred to House Committees
83rd Cong. 1st Sess.	5471
83rd Cong. 2nd Sess.	4814
84th Cong. 1st Sess.	6580
84th Cong. 2nd Sess.	5876
85th Cong. 1st Sess.	9599
85th Cong. 2nd Sess.	3922

Source: Library of Congress, Legislative Reference Service. Digest of Public General Bills, Final Issues for 1953, 1954, 1955, 1956, 1957 and 1958.

¹³ See the Brief of *amici curiae* Davis, et al. submitted in support of petition for rehearing in *Barenblatt v. United States*, O. T. 1958, No. 35. This Court's acceptance of the Committee's claims *Barenblatt v. United States*, 360 U. S. 109, 127, is not justified by the facts.

28, 1956 and Hearings on *Passports* conducted by this Committee from May 23 to June 23, 1956. A reading of the two sets of hearings show that this Committee's function is to expose whereas the legislative work is done by the other committees.

(c) The hearings conducted by this Committee purport to investigate Communist activities on the theory that they involve threats to national security. *United States v. Josephson*, 165 F. 2d 82, 87-88, *cert. den.* 333 U. S. 838, *reh. den.* 333 U. S. 858. Nevertheless, the following is invariably the pattern of Committee testimony:

(i) The Committee's interest is in names rather than activities. It will sometimes call the same witness several times; it may even call witnesses who had previously testified before other committees. An examination of the Committee's hearings and reports into such subjects as education, and the arts and, in the instant case, into integration, has yet to reveal anything like an "investigation of advocacy of or preparation for overthrow"; *Barenblatt v. United States*, *supra*, at 130.

(ii) The Committee's witnesses are not called to supply information but to corroborate prior testimony as to their Communist Party membership. The inquiries frequently relate to matters remote in time which are quite meaningless in terms of current legislative problems.

(iii) It is common knowledge that Communist Party membership and prestige are at their lowest ebb. Stouffer, *Communism, Conformity and Civil Liberties* (1955); Draper, *Roots of American Communism* (1957); Shannon, *Decline of American Communism* (1957); Ginzberg, *Rededication to Freedom* (1959). The public revelation of one-time Communists, invariably known to the Federal Bureau of Investigation as well as to the Committee, is not a legislative function. In contrast, the variety and scope of existing legislative sanctions against so-called subversive activity are, of course, unparallel in our history.

(iv) The principal function of the Committee, ironically, is in the field of propaganda. It has the largest committee staff and appropriations. It prints more copies of its hearings and reports than all the other committees together.¹⁴ These reports customarily have nothing to do with legislation but consist of diatribes against organizations and persons of whom the Committee disapproves. It publishes, in the hundreds of thousands, copies of such documents as *Spotlight on Spies* (250,000), *Ideological Fallacies of Communism* (36,000) and *The Crimes of Khrushchev*. Only recently it supported the scandalous charge that Communists had infiltrated the Protestant Churches, *I. F. Stone's Weekly*, March 7, 1960, p. 2.

Of course, no single item of the foregoing establishes the proposition urged herein. But cumulatively the data now available does establish that the role of the Committee from its beginnings has been that of exposure rather than of recommending legislation. See Mr. Justice Brennan's dissenting opinion in *Barenblatt v. United States*, 360 U. S. 109, 130.

¹⁴ The basic Committee appropriation has risen from \$125,000 for the 79th Congress to \$654,000 for the 86th Congress. In addition it secured special permission to print its publications in unusually large amounts, e.g.:

Cong.	Year	Amount	Publication
81:1	1949	250,000	100 Things You Should Know About Communism in the U.S.A.
82:1	1951	500,000	1000 Things You Should Know About Communism
	1954	35,000	Guide to Subversive Organizations and Publications
85:1	1957	60,000	Guide to Subversive Organizations and Publications

In contrast to a total absence of special printing authorizations for the important Judiciary and Foreign Affairs Committees, the House Committee has secured such authorizations as 1,500,000 copies (81st Cong., 1st Sess.), 565,000 (82nd Cong., 1st Sess.) and 78,500 (86th Cong., 1st Sess.).

6. In *Barenblatt*, this Court relied upon extensive legislative history to determine the scope of the authority given by Congress to the Committee. In that case this Court was not asked to resolve the more difficult issue of whether H. Res. 5, treated as a criminal statute, was sufficiently clear to the witness to avoid violation of the Fifth and Sixth Amendments. The legislative gloss relied upon by this Court in *Barenblatt* to determine the scope of Committee authority may not be used to impute *scienter* to the witness. A criminal statute must be clear "on its face." *Lanzetta v. New Jersey*, 306 U. S. 451, 453, 458, and cases cited.

We know of no criminal case in which this Court held that a statute obscure on its face was a sufficient guide to a defendant's conduct because of legislative reports and other history known in fact only to the Congress and students of its operations. The decision below thus presents to this Court a conflict with the principle established in *Lanzetta v. New Jersey*, 306 U. S. 451 and *Winters v. New York*, 333 U. S. 507 and is thus entitled to review.

7. Finally, this case presents three important recurring problems in prosecutions under 2 U. S. C. § 192:

(a) A witness before a Congressional committee may not be found in contempt in the absence of an unequivocal direction by the Committee chairman after the witness has raised his objections. *Watkins v. United States*, 354 U. S. 178; *Flaxer v. United States*, 358 U. S. 147; see *Scull v. Virginia*, 359 U. S. 344.

The record does not reveal that such a direction was made in the instant case except possibly with respect to Count One, which is defective on pertinency and other grounds (*supra*, pp. 13-14).

While petitioner assumed that his objections would be overruled (R. 155), he had statutory and constitutional rights to the Committee's adjudication and direction, and

a waiver of such rights is not to be lightly inferred. *Smith v. United States*, 337 U. S. 137, 150. A witness may not assume that the Committee would capriciously insist upon an answer regardless of his asserted reasons for refusal, particularly where substantial constitutional rights and penal sanctions are involved. In holding the contrary, the decision below is again in conflict with the Court of Appeals for the Third Circuit, which expressly held that "a defendant cannot be held to have waived his objections to the pertinency of an investigating committee's inquiries." *United States v. Orman*, 207 F. 2d 148, 154.

Thus, petitioner was "never confronted with a clearcut choice * * * between answering the question and risking prosecution for contempt." *Emspak v. United States*, 349 U. S. 190, 202. See also *Bart v. United States*, 349 U. S. 219, 221; Mr. Justice Reed dissenting in *Quinn v. United States*, 349 U. S. 155, at p. 185.

(b) The indictment—as with the subpoena (R. 6-7)—failed to state the subject matter under investigation, an element of the crime charged. Nor did it charge that the failure to answer questions was willful. This is most significant even if *willful* does not involve a *mens rea* as suggested, in the first question presented, *supra* pp. 8-10. In any event, the decision below is in conflict on this point with the leading decision of Judge Weinfeld in the Second Circuit, *United States v. Lamont*, 18 F. R. D. 27, *aff'd* 236 F. 2d 312, and the conflict should be resolved by this Court.

(c) The third question is whether petitioner was entitled to the dismissal of the indictment—or to an appropriate bill of particulars—where the indictment failed to show how the questions recited in the six counts were pertinent to the subject allegedly under investigation. Such a bill has been directed where, as here, pertinence was not manifest, *United States v. Dunham*, D. D. C. Crim. No. 1148-54 (unreported). Its absence here raises a substantial question under Rule 7, Fed. Rules Crim. Proc., under the due

process clause of the Fifth Amendment and under the Sixth Amendment's guarantee of his right "to be informed of the nature and cause of the accusation."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Appendix A
 IN THE
 UNITED STATES COURT OF APPEALS
 FOR THE FIFTH CIRCUIT
 No. 17705

CARL BRADEN,
 Appellant,
versus

UNITED STATES OF AMERICA,
 Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF GEORGIA.

(December 10, 1959.)

Before HUTCHESON, CAMERON and JONES, Circuit Judges.

JONES, Circuit Judge: The appellant, Carl Braden, was convicted of each of the six counts of an indictment charging contempt of Congress under 2 U. S. C. A. § 192,¹

¹ "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

arising from his refusal to answer certain questions at a hearing of a Subcommittee of the Committee on Un-American Activities of the House of Representatives. He has appealed from the conviction.

Complying with a subpoena, the appellant appeared before the Subcommittee in Atlanta, Georgia. He was accompanied by two attorneys. After being sworn the appellant identified himself as Field Secretary of the Southern Conference Fund, Inc., which, he said, was "a southwide interracial organization working to bring about integration, justice and decency in the South." He was also the associate editor of the Southern Patriot, a newspaper published by the Southern Conference Educational Fund which, said the appellant, "disseminates information on integration in the South and about the people who are working for integration." The appellant testified that the subpoena of the Committee had been served on him while he was visiting in Rhode Island. In reply to a question of counsel for the Committee, he stated that he was visiting Harvey O'Connor, National Chairman of the Emergency Civil Liberties Committee. He was asked to state the point from which he departed to the State of Rhode Island. The appellant expressed the belief that the question was not pertinent to any question that the Committee might be investigating, and that the question was an invasion of his right to associate under the First Amendment. He declined to answer. The Committee counsel gave the appellant an explanation of the pertinency of the question, saying:

"Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Com-

munist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

"Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activity sometime ago introduced a bill, H.R.9937, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting the registration of communists; some of these provisions undertake to tighten the security laws respecting the dissemination of communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

"In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

"It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws, and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

"If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the communist conspiracy, head of the Emergency Civil Liberties Committee, another organization that has been cited by a Congressional Committee as a communist front."

The Chairman of the Subcommittee ruled that a foundation had been laid establishing the pertinency of the question and directed the appellant to answer. The appellant again refused to answer stating that his beliefs and his associations were none of the business of the Committee and asserting that his refusal to answer was "on the grounds of the first amendment to the United States Constitution, which protects the rights of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly." He declined to answer many other questions upon the same grounds; adding as an additional ground a claim that the mandate of the Committee was so vague that the subjects it was authorized to investigate could not be determined. The appellant was asked if he was in the Atlanta area

in December of 1957, and he gave an affirmative answer. He was then asked, "And did you participate in a meeting here, at that time?" He refused to answer and the refusal is charged as an offense by Count One of the indictment. After the appellant had testified that it was a matter of public record that the Southern Conference Educational Fund met in the American Red Cross Building in Atlanta in December, 1957, he was asked, "Who solicited the quarters to be made available to the Southern Conference Educational Fund?" The refusal to answer this question forms the basis of Count Two of the indictment.

Committee Counsel asked the appellant, "Now sir, are you connected with the Emergency Civil Liberties Committee?" He declined to answer and this question is the subject matter of Count Three. He was asked, "Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" The appellant's refusal to answer this question resulted in Count Four of the indictment.

The appellant was shown a letter² on the letterhead of Southern Conference Educational Fund. He admitted

"Dear Friend:

"We are writing to you because of your interest in the Kentucky 'sedition' cases, which were thrown out of Court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

"There are now pending in both houses of Congress bills that would nullify this decision. We understand there is a real danger that these bills will pass.

"We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

that it bore the signatures of his wife and himself. He was asked, "Were you a member of the Communist Party the instant you affixed your signature to that letter?" The refusal to answer this question is the charge of Count Five.

Counsel for the Committee stated to the appellant:

"Eugene Feldman—who lives in Chicago, Illinois. He is the editor of the Southern News-letter. We had him before the Committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South."

After this statement the appellant was asked, "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do with the Southern News Letter?" The appellant refused to answer this question on the ground that it was an attempted invasion of the freedom of the press as well as the grounds

"It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human being involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your senators and your congressman asking them to oppose S. 654, S. 2646, and H.R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately, as the bills may come up at any time.

"Cordially yours,

"CARL and ANNE BRADEN."

assigned for the refusal to answer the other questions. This refusal to answer is the basis for the charge contained in Count Six.

The appellant moved to dismiss the indictment which motion was overruled and denied. The appellant also filed a motion for a bill of particulars in which the request was made that the Government

"1. State the question under inquiry as to which each of the questions set forth in Counts One through Six is alleged to be pertinent.

"2. State the manner in which each of the questions set forth in Counts One through Six is alleged to be pertinent to the question under inquiry referred to in item 1 above."

There was apparently no order entered on the motion for a bill of particulars. The Government, however, filed a Bill of Particulars as to the information sought, in Request Number 1 of the motion in these words:

"The question under inquiry by the Subcommittee of the House Committee on Un-American Activities, on July 30, 1958, as alleged in the indictment, as to which each of the questions set out in Counts 1 through 6 of this indictment is alleged to be pertinent, was:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda."

No objection was made as to the sufficiency of the bill of particulars as a response to the first request nor was the court asked to require the Government to respond to the second request contained in the motion.

Following the verdict of guilty upon each of the six counts, concurrent sentences of twelve months imprisonment on each of the counts were imposed. Motions in arrest of judgment and for a new trial were made and denied.

The assertion is made on behalf of the appellant that he was not called before the Committee for any legislative purpose but rather for the purpose of harassing and exposing him because of his support of integration and civil rights and his opposition to the Committee and to pending legislation. Investigations can be made by the Congress only as to matters which are proper subjects for legislation by it. There is no congressional power to expose for the sake of exposure. *Watkins v. United States*, 354 U. S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273; *Barenblatt v. United States*, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115. The opening statement of the Committee Chairman showed a purpose of investigating current subversive Communist techniques in the South. Legislative purposes might well be furthered by a determination of whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system. If a Congressional Committee ascertained that Communists were attempting to create an appearance of respectability for Un-American activities by seeking the shelter of such an honored and honorable institution as the American Red Cross, that fact would be pertinent to the inquiry it was making.

There was a close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party. O'Connor was identified as the National Chairman of the Emergency Civil Liberties Committee which was stated to be a Communist front organization. The activities of that organization, with which the appellant would have

been familiar if he was associated with O'Connor in the development for it of plans and strategies, were pertinent to the investigation being made by the Committee.

We need not make any analysis of the pertinency of the questions upon which other counts of the indictment were based. The sustaining of the appellant's conviction on any of the counts would require an affirmance since concurrent sentences were imposed. *Barenblatt v. United States*, *supra*; *Davis v. United States*, 6th Cir. 1959, 269 F. 2d 357; *Estep v. United States*, 5th Cir. 1955, 223 F. 2d 19, cert. den. 350 U. S. 862, 76 S. Ct. 105, 100 L. Ed. 765; *Gilmore v. United States*, 5th Cir. 1955, 228 F. 2d 121; *Morales v. United States*, 5th Cir. 1956, 228 F. 2d 762.

While before the Committee, the appellant's refusals to answer were frequently accompanied by statements or suggestions that the Committee's purpose was the investigation of integration. But one who is known or believed to be a Communist and is suspected of being engaged in Un-American activities does not acquire immunity by adopting the role of a racial integrationist.

During the appearance of the appellant before the Committee he stated his claim of right in refusing to answer the Committee's questions by saying, "I am standing on the *Watkins*,³ *Sweezy*,⁴ *Koenigsberg*,⁵ and other decisions of the Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States to private belief and association." Again he said, "I also believe it is an invasion of my right to associate under the first amendment and I therefore decline to answer." This position, taken at the Committee

³ *Watkins v. United States*, *supra*.

⁴ *Sweezy v. New Hampshire*, 354 U. S. 234, 77 S. Ct. 1203, 1 L. Ed. 2d 1311.

⁵ *Koenigsberg v. State Bar of California*, 353 U. S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810, reh. den. 354 U. S. 927, 77 S. Ct. 1374, 1 L. Ed. 2d 1441.

hearing is renewed here. It is apparent that the appellant misconceived the effect of the Watkins case. That this is so is clearly demonstrated by the opinion in the Barenblatt case from which we quote these excerpts:

"Undeniably the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. When First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. . . .

"That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation, 'the ultimate value of any society', *Dennis v. United States*, 341 U. S. 494, 509. Justification for its exercise in turn rests on the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence, a view which has been given formal expression by the Congress.

"We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." 360 U. S. 109, 126, 127-128, 134.

The foregoing principles are applicable and controlling here. The First Amendment does not give to the appellant any right to refuse to answer the questions which were propounded to him by the Committee.

The district court decided that the questions upon which the indictments were framed were pertinent and so instructed the jury. The appellant, at the close of the trial, objected and made the contention that the pertinency issues should have been submitted to the jury. The same contention is urged on this appeal. We have no doubt but that this question is one of law and was rightly resolved at the trial. *Sinclair v. United States*, 279 U. S. 263, 49 S. Ct. 268, 73 L. Ed. 692.

Before this Court the appellant says his conviction must be reversed because, after he had made his objections to the questions put to him, he was not expressly directed to answer the questions. After the question on which the first count of the indictment was asked, the appellant said "Again, the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?" The Chairman replied that "It is understood that you are referring to the first amendment." The Staff Director suggested that if there was to be an understanding as to the basis for refusing to answer, there might also be an understanding as to directions to the appellant to answer. The Chairman asked the appellant if he understood that he was ordered to answer and the appellant replied, "I will understand that you are directing me to answer each question in order to expedite the matter so we will not be wasting the Committee's time and everybody else's time on this." Later the Staff Director inquired whether the record was clear.

that in response to each refusal to answer there had been given a direction to answer, and the appellant said, "I understand. My counsel and I understand." The appellant waived the right to have a specific direction to answer each of the questions to which he made objection and which he refused to answer. He now asserts that he could not waive the requirement of being specifically directed to answer each question. It is required that the witness be ordered to answer a question, where an objection has been made or a refusal to answer has been stated. This requirement is made so that it may be established beyond doubt, in a criminal prosecution, that the refusal was intentional and deliberate. The statements of the appellant clearly showed that he and his counsel were fully informed and the request to omit the specific directions to answer was intelligently made by the appellant. He was in no way prejudiced. Due process was in no way denied. If the waiver had been made at a trial before a court we are without doubt that no assignment of error could properly be predicated upon permitting the waiver. *Smith v. United States*, 5th Cir. 1956, 234 F. 2d 385; *Beeler v. United States*, 5th Cir. 1953, 205 F. 2d 454, cert. den. 346 U. S. 877, 74 S. Ct. 130, 98 L. Ed. 385; *Hagans v. United States*, 5th Cir. 1959, 261 F. 2d 924. We see no interest of justice that calls for a different rule here. It might, though, be observed that the First Count upon which the appellant was convicted was for refusal to answer a question after being expressly ordered to give an answer. It follows, as has been stated, that if the conviction on the First Count is upheld there will be an affirmance in view of the concurrent sentences imposed.

The appellant now urges that when he appeared before the Committee the rules as announced in the Watkins opinion justified his belief that the First Amendment protected him in refusing to answer the questions of the Committee; and being so justified he did not have the criminal intent necessary to sustain a conviction for contempt. The offense is the willful refusal to comply with the order

of the Committee to answer a pertinent question. The mistaken belief that the law justifies a refusal to answer is not a defense, whether the belief is induced by the misreading of a judicial opinion, by the advice of counsel or otherwise. *Sinclair v. United States, supra.*

The appellant would have us hold that the indictment should have specified the pertinency of each question and would have us reverse his conviction for insufficiency of the indictment. A comparison of the indictment here with that by which Barenblatt was charged will show the lack of merit in this contention. Cf. *Barenblatt v. United States*, D. C. Cir. 1957, 100 App. D. C. 13, 240 F. 2d 875, 877. The appellant also urges that the trial court should have ordered a full response to the requests in the motion for a bill of particulars. We think that the appellant, if he regarded the bill of particulars as inadequate, should have said so in an appropriate manner before going to trial. But aside from that, we think there would have been no error if the court had expressly denied the request contained in the motion. The purpose of a bill of particulars is either to supplement the indictment in informing a defendant of facts constituting ingredients of the offense with which he is charged in order that he may prepare his defense or so to perfect the record as to bar a subsequent prosecution. 4 Wharton, Criminal Law and Procedure 720, § 1867. Pertinency being, as has been shown, a matter of law, the manner in which the questions propounded are pertinent to the inquiry are not proper matters for a bill of particulars. *Rose v. United States*, 9th Cir. 1945, 149 F. 2d 755. It cannot be well contended that the appellant could have been twice tried for the offenses charged in the indictment. We cannot see, and the appellant does not advise us, how the preparation of his defense would have been helped by any information he sought by the second part of his Motion for a Bill of Particulars. The absence of any order directing the furnishing of any further bill of particulars was not error. *Wong Tai v. United States*, 273 U. S. 77, 47 S. Ct.

300, 71 L. Ed. 545; *Kaufman v. United States*, 6th Cir. 1947, 163 F. 2d 404, cert. den. 333 U. S. 857, 68 S. Ct. 726, 92 L. Ed. 1137, reh. den. 333 U. S. 878, 68 S. Ct. 896, 92 L. Ed. 1154. Cf. *Watts v. United States*, 5th Cir. 1947, 161 F. 2d 511, cert. den. 332 U. S. 769, 68 S. Ct. 81, 92 L. Ed. 354.

Finally, the appellant took and takes the position that the Congress had no power to authorize the Committee investigations and that its Rule XI⁶ under which the investigation here challenged was conducted was so vague and ambiguous that it could have no constitutional validity. This contention has also been put at rest by the Supreme Court in the *Barenblatt* decision. In the opinion, after reviewing the history of the Committee, the Court held:

"In this framework of the Committee's history we must conclude that its legislative authority to conduct the inquiry presently under consideration is unassailable, and that independently of whatever bearing the broad scope of Rule XI may have on the issue of 'pertinency' in a given investigation into Communist activities, as in *Watkins*, the Rule cannot be said to be constitutionally infirm on the score of vagueness." 360 U. S. 109, 122-123.

The quoted language is applicable here and the principle stated forecloses the appellant's contention.

We do not find any error in the judgment and sentence or in the proceedings culminating therein. The judgment and sentence are **AFFIRMED**.

⁶ "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." H. Res. 5, 83d Cong., 1st Sess.; H. Res. 7, 86th Cong., 1st Sess.

Appendix B

(JUDGMENT)

Extract from the Minutes of December 10, 1959

No. 17705

O

CARL BRADEN,

versus

UNITED STATES OF AMERICA.

O

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment and sentence of the District Court in this cause be, and the same are hereby, affirmed.

Appendix C

The statutory provisions involved read in relevant part:

2 U. S. C. Section 192, R. S. 102 (52 Stat. 942), as amended is as follows:

"Refusal of witness to testify

"Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month or more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 85th Congress:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"*Power and Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively * * * .

"(q)(1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7 of the Federal Rules of Criminal Procedure reads in relevant part:

"Rule 7. The indictment and the Information.

(c) NATURE AND CONTENTS. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *

(f) BILL OF PARTICULARS. The court for cause may direct the filing of a bill of particulars. * * *

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JAMES R. BROWNING, Clerk

No. ~~770~~ 54

In the Supreme Court of the United States

OCTOBER TERM, 1959

CARL BRADEN, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 779

CARL BRADEN, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. A, pp. 22-35) is reported at 272 F. 2d 653.

JURISDICTION

The judgment of the Court of Appeals was entered on December 10, 1959 (Pet. App. B, p. 36) and a petition for rehearing was denied on January 12, 1960 (R. 193). On February 2, 1960, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including March 12, 1960. The petition was filed on March 10, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities was validly authorized to conduct congressional investigations and whether the subcommittee holding hearings in Atlanta on Communist infiltration of southern industry was pursuing a valid legislative purpose under that authorization.

2. Whether the questions which the petitioner refused to answer were pertinent to a valid inquiry or whether they infringed his rights under the First Amendment.

3. Whether the petitioner's alleged reliance on this Court's decision in *Watkins v. United States*, 354 U.S. 178, justified his refusal to answer.

4. Whether the indictment was defective.

STATUTE AND RULE INVOLVED

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the House of Representatives, H. Res. 5, 85th Cong., 1st sess., are set forth in Appendix C to the Petition for Certiorari (Pet. 37-38).

STATEMENT

The petitioner was charged in a six-count indictment (R. 6-7) with having knowingly, wilfully and unlawfully refused to answer six questions pertinent to the matters under inquiry by a subcommittee of the Committee on Un-American Activities of the House of Representatives.¹ Following a trial by jury, the petitioner was found guilty on all six counts (R. 16) and was sentenced to twelve months' im-

¹ The Committee had reported the petitioner's contumacy to the House of Representatives (H. Rept. No. 2584, 85th

prisonment on each count, the sentences to run concurrently (R. 114-115). On appeal to the Court of Appeals, his conviction was affirmed (Pet. App. A, pp. 22-35; 272 F. 2d 653).

The pertinent facts may be summarized as follows:

* Pursuant to an authorization from the full Committee (G. Ex. 6), a subcommittee of the Committee on Un-American Activities conducted public hearings in Atlanta, Georgia, on July 29, 30 and 31, 1958, for the purpose of inquiring into "[t]he extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South" (G. Ex. 10, pp. 2605-2606; G. Ex. 9, R. 124-125).²

The petitioner appeared before the subcommittee on July 30, in response to a subpoena served upon him in Rhode Island (G. Ex. 10, p. 2667; G. Ex. 9, R. 130-132). At that time the Committee had information that the petitioner was a member of the Communist Party; that he was engaged as a Communist with an organization known as the Southern Conference Educational Fund, in whose behalf he traveled through-

Cong., 2d sess. (G. Ex. 9)) and the House had resolved to direct the Speaker to certify the Committee's report to the United States Attorney (H. Res. 686, 85th Cong., 2d sess. (G. Ex. 13)).

² Government Exhibit 10 is the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d sess., July 29, 30, and 31, 1958; entitled, *Communist Infiltration and Activities in the South*. Government Exhibit 9 is House Report No. 2584, which contains excerpts from Government Exhibit 10. Pertinent excerpts from Government Exhibit 9 appear in the printed record at R. 123-168.

out the South as a field representative, disseminating Communist propaganda and doing Party work (R. 41). The Southern Conference Educational Fund was a successor organization to the Southern Conference for Human Welfare. This latter organization had been cited by another Congressional committee as a Communist-front organization (R. 41).

In addition to this information, the Committee had been informed that the petitioner was a contributor to the *Southern Newsletter*, believed by the Committee to be published by Communists (R. 41), and the Committee had reason to believe that he might be connected with the distribution of this publication throughout the South (see R. 46-47). It was also the Committee's understanding that the petitioner had recently traveled to Rhode Island to meet with Mr. Harvey O'Connor, the national chairman of an organization known as the Emergency Civil Liberties Committee (R. 42). Mr. O'Connor had been identified under oath in testimony before the Committee as a member of the Communist Party (R. 46, 48), and the Emergency Civil Liberties Committee had been cited by the Senate Subcommittee on Internal Security as a Communist-front organization (R. 48).

After the petitioner was sworn, he admitted that he was employed as a field secretary for the Southern Conference Educational Fund and that he had been visiting with Harvey O'Connor in Rhode Island when he was subpoenaed to appear before the Committee (G. Ex. 9, R. 132-133, 135; G. Ex. 10, pp. 2667-2668). He refused, however, to tell the subcommittee where he had been immediately before his departure to

Rhode Island to confer with O'Connor (G. Ex. 9, R. 136; G. Ex. 10, pp. 2668-2669) or whether he was, at the time of his appearance before them, a member of the Communist Party (G. Ex. 9, R. 139; G. Ex. 10, p. 2670), asserting that "this is not pertinent to any possible investigation that this committee might be conducting" and that "I also believe that it is an invasion of my right to associate under the first amendment" (G. Ex. 9, R. 136; G. Ex. 10, p. 2669).

As his interrogation proceeded, he admitted that he had been in the Atlanta area in December, 1957, and that the Southern Conference Educational Fund had held a meeting in the American Red Cross Building in Atlanta at that time but he refused to tell the subcommittee whether he had participated at that meeting (count I) or who had solicited the quarters to be made available to the Southern Conference Educational Fund for the meeting (count II) (G. Ex. 9, R. 153-154, 159; G. Ex. 10, pp. 2675, 2677). He was then asked, but refused to answer, whether he was connected with the Emergency Civil Liberties Committee (count III) and whether he had developed plans and strategies for that organization during his recent conferences with Harvey O'Connor in Rhode Island (count IV) (G. Ex. 9, R. 160-161; G. Ex. 10, p. 2678). The staff director of the Committee, Mr. Arens, then exhibited to the petitioner a circular letter which bore his signature and that of his wife. The letter was addressed to "Dear Friend" and urged its recipients to write to their Senators and Representatives to ask them to oppose a number of bills relating to the field of internal security which were

then pending before Congress. The petitioner was asked whether he was a member of the Communist Party when he affixed his signature to this letter. He refused to answer the question (count V) (G. Ex. 9, R. 161-164; G. Ex. 10, pp. 2678-2679). He also refused to tell the subcommittee whether he was connected in any way with the *Southern Newsletter* (count VI) (G. Ex. 9, R. 164-165; G. Ex. 10, p. 2679).

Immediately following the petitioner's initial refusal to answer on grounds of impertinency (*supra*, p. 5), the staff director of the Committee explained the pertinency of the questions to him, pointing out that the Committee was considering and studying a number of legislative proposals designed to tighten the security laws with respect to registration of Communists, the dissemination of Communist propaganda and the prohibition of certain types of activities which the Committee understood the petitioner himself had been engaged in. The explanation concluded (G. Ex. 9, R. 136-138; G. Ex. 10, 2669):

It is * * * for these reasons * * * that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use * * * in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not * * * these proposals pending before the committee should be recommended for enactment.

It was made clear and understood by the petitioner that this explanation of pertinency was to be appli-

cable to all of the questions which the subcommittee would propound to him (G. Ex. 9, R. 140-141, 153, 156, 160; G. Ex. 10, pp. 2670-2671, 2675, 2676, 2678), and that he was being specifically directed to answer each of the questions (G. Ex. 9, R. 149-150, R. 154-155, 160; G. Ex. 10, pp. 2674, 2676, 2678). The petitioner, however, persisted in his refusals to answer the questions, relying on the same grounds which he had asserted initially (see *supra*, p. 5), i.e., their alleged lack of pertinency and violation of his freedom of association under the First Amendment (G. Ex. 9, R. 154, 159, 161-162, 164, 165; G. Ex. 10, pp. 2675, 2677-2680). He did not rely on his Fifth Amendment privilege against self-incrimination as a basis for refusing to answer any of the Committee's inquiries (G. Ex. 9, R. 140, 141-142; G. Ex. 10, pp. 2670, 2671).

ARGUMENT

1. Insofar as the petitioner attacks the authority of the Un-American Activities Committee and the legality of the particular investigation by the subcommittee before which he was subpoenaed, and insofar as the petitioner seeks to justify his refusal to answer questions on the ground of impertinency⁴ or

⁴ He added, as an additional objection to the question relating to his connection with the *Southern Newsletter* (*supra*, p. 6), that he believed it was an invasion of the freedom of the press (G. Ex. 9, R. 165; G. Ex. 10, p. 2679).

⁵ With respect to the issue of the pertinency of the questions which the petitioner refused to answer, while some of them, i.e., the questions recited in counts I and II, dealt with preliminary inquiries which were intended as a foundation for other questions (R. 47-48), there can be no question about the pertinency of the question listed in count V which was, "Were

of infringement of his rights under the First Amendment, we believe that this case is controlled by this Court's decision in *Barenblatt v. United States*, 360 U.S. 109. In fact, the petitioner specifically asks the Court to reconsider its decision in *Barenblatt* (Pet. 2, 16-18). Earlier in this term this Court refused a similar plea. *Davis v. United States*, 361 U.S. 919. No additional reason for reconsideration is presented by this case.

2. The petitioner argues that his refusal to testify took place before this Court's decision in *Barenblatt* and that he was justified, on the basis of the earlier decision in *Watkins v. United States*, 354 U.S. 178, in believing that the pertinency of the questions to a legitimate legislative purpose was not sufficiently shown to require him to answer. This argument overlooks the fact that his case is distinguishable from *Watkins* in that the pertinency of his testimony was specifically spelled out to him. *Supra*, p. 6. The petitioner's argument carries the implication that *Watkins* was overruled by *Barenblatt*, an assumption directly contrary to the specific statement of the Court. 360 U.S. 109, 123-125. In any event, it was specifically held in *Sinclair v. United States*, 279 U.S.

you a member of the Communist Party the instant you affixed your signature to that letter?" This is the very type of question dealt with in *Barenblatt*. Since the petitioner received concurrent sentences on all the counts, the judgment could not be successfully attacked if he had been properly found guilty only on count V. Therefore it is not necessary to examine further into the pertinency of any of the other questions. *Barenblatt v. United States*, 360 U.S. 109, 115; *Lawn v. United States*, 355 U.S. 339, 359; *Roviaro v. United States*, 353 U.S. 53, 59, fn. 6.

263, 299, that a "mistaken view of the law is no defense" in this type of offense.

3. The issues which the petitioner presents with respect to the sufficiency of the indictment and the bill of particulars, and the absence of proof as to a specific direction to answer, are insubstantial. The indictment alleged that "the Defendant knowingly, wilfully and unlawfully refused to answer * * * pertinent questions" (R. 6), and although the factual basis supporting pertinency was not set forth,^{*} a bill of particulars was filed (R. 12). The petitioner now complains that the bill of particulars was inadequate (Pet. 20), but no complaint was made at the time. As to the specific direction to answer, the record is clear that the petitioner was fully informed that the Committee was in fact requiring him to answer each of the questions involved (R. 149-150, 154-155, 160). In fact, the petitioner specifically stated, "I will understand that you are directing me to answer each question in order to expedite the matter" (R. 155).

4. The petitioner's testimony before the House subcommittee immediately preceded that of Frank Wilkinson, whose refusal to answer the questions addressed to him led to his prosecution and conviction for the same offense as is here involved. The judgment of the Court of Appeals for the Fifth Circuit

^{*} It has been held that an indictment under 2 U.S.C. 192 need not specifically set forth these matters. *Sacher v. United States*, 252 F. 2d 828, 830-831 (C.A.D.C.), reversed on other grounds, 356 U.S. 576; *Barenblatt v. United States*, 240 F. 2d 875, 878 (C.A.D.C.), reversed on other grounds, 354 U.S. 930; *United States v. Josephson*, 165 F. 2d 82, 84-85 (C.A. 2), certiorari denied, 333 U.S. 838.

upholding that conviction was the subject of a petition for a writ of certiorari (No. 703, this Term) which this Court granted on March 28. Although the petition in that case presents a variety of questions, the principal issue urged by the petition which does not appear to have been covered by this Court's decision in *Barenblatt* involves the argument that the Un-American Activities Committee had no authority to investigate propaganda activities against itself. See Pet. in No. 703, pp. 7-10. While we do not agree that the *Wilkinson* record actually raises that issue, and while we are, of course, not certain as to the Court's reasons for granting certiorari in *Wilkinson*, it appears from the face of that petition (as well as from the earlier denial of certiorari in *Davis v. United States*, 361 U.S. 919, where the petitioner had asked for reconsideration or interpretation of *Barenblatt*) that the issue probably leading to the grant in *Wilkinson* is one which cannot in any event be said to be present here on the record of this case*. On that basis, we oppose the grant of certiorari in this case with the suggestion that if the Court believes the

*In the trial of the case in the district court the Staff Director of the Committee testified, "In addition to that it was our information that Mr. Braden, and again my recollection is not absolutely clear, but it is in general that he had something to do with the preparation and dissemination of [petitions] which were circulated in the Southland for the purpose of precluding or attempting to preclude or softening the very hearings which we proposed to have here" (R. 43). However, in explaining to the petitioner the pertinency of his testimony at the hearing before the subcommittee, there is no suggestion that interference with, or propaganda against, the Committee was a matter being looked into (R. 136-138).

issues here will be affected by its consideration of the issues in *Wilkinson*, it withhold action on this petition until that case has been argued and decided.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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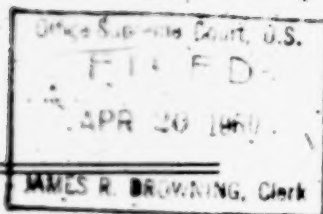
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APRIL 1960.

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No. ~~230~~ 54



Supreme Court of the United States

October Term, 1959

CARL BRADEN,

Petitioner,

against

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

REPLY BRIEF OF THE PETITIONER

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Supreme Court of the United States

October Term, 1959

No. 779

CARL BRADEN,

Petitioner,

against

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF THE PETITIONER

1. Petitioner has challenged the pertinency of the questions put to him. Here we note a strange discrepancy between the respective positions of the Court below and the Government. The Court below made a finding of pertinency only of questions relating to meetings at the American Red Cross Building and with Mr. Harvey O'Connor (Counts I and II and possibly III and IV; Appendix to Petition, 29-30). But this type of question is treated by the Government as "preliminary" (Brief in Opposition, pp. 7-8, fn. 4). As such it could not be a valid basis for conviction. *Bowers v. United States*, 202 F. 2d 447 (C. A. D. C., 1953).

Hence, the Government points instead to a different question which it regards as clearly pertinent—"Were you a member of the Communist Party the instant you affixed your signature to that letter?" (Count V; Brief in Opposition, pp. 7-8, fn. 4). But this question, *not* passed upon by the Court below, is precisely the kind of question which cannot be pertinent to legislation since even a Communist's

constitutional right of petition is immune from congressional control:

2. To say that "[t]his is the very type of question dealt with in *Barenblatt*" (Brief in Opposition, p. 8, fn. 4) is to disregard the context in which the question was put in that case. Disapproval of such an approach has been expressed by this Court in cases ranging from *Handly's Lessee v. Anthony*, 5 Wheat. (18 U. S.) 374, 381 to *Hughes v. Superior Court*, 339 U. S. 460, 465. Always "the specific situations have controlled decision." *Ibid.* *Barenblatt* was an investigation into Communist activities regarded as reprehensible (360 U. S. 109, 113, 115, 129); hence the inquiry as to whether *Barenblatt* was, as charged, a member. But the question put to Petitioner related to his constitutionally protected right of petition (*United States v. Cruikshank*, 92 U. S. 542). Would the Government argue that in an investigation of churches—a matter not foreign to this Committee¹—the Committee was entitled to ask "Were you a member of the Communist Party the instant you attended religious services?" Such a question has no legislative purpose, it invades a constitutionally protected area, and it has no function except that of exposure.

3. The Government treats *Barenblatt* as *carte blanche* authority to investigate anything under the cry of Communism. No such intention can be found in this Court's careful analysis of the record there. Certainly, this case presents more vividly than *Barenblatt* an example of "exposure merely for the sake of exposure" (Mr. Justice Brennan, dissenting in *Barenblatt v. United States*, 360 U. S. 109, 166) which all agree is not a legislative purpose. This Court's grant of certiorari in *McPhaul v. United States*, No. 674, Oct. Term 1959 (see Point 3 in the Petition therein) sufficiently disproves any such sweeping power

¹ See e.g., Petition for Certiorari herein, p. 18.

in the Committee in disregard of the requirements of 2 U. S. C. § 192.

4. The Government misunderstands Petitioner's first point—that his conviction for reliance upon *Watkins* was a violation of 2 U. S. C. § 192 and a denial of due process under the Fifth Amendment: (See Brief in Opposition, p. 8.) We have posed the question as to whether *scienter* is established where Petitioner explicitly relied upon an opinion of this Court.²

In response, the Government cites *Sinclair v. United States*, 279 U. S. 263, 299, that “a mistaken view of the law is no defense.” (Brief in Opposition, p. 9.) That was not a case like the present where the litigant “had a right to repose upon the decision of the highest judicial tribunal in the land”, *Harris v. Jex*, 55 N. Y. 421, 424, discussed in Cardozo, *The Nature of the Judicial Process*, 147 (1928). If in a period such as that between the two legal tender decisions of *Hepburn v. Griswold*, 8 Wall. (75 U. S.) 603, and *Knox v. Lee*, 12 Wall. (79 U. S.) 457, “[m]ost courts in a spirit of realism have held that the operation of the statute has been suspended in the interval”, Cardozo, *ibid.*, should not this Court give equal consideration to the more troublesome period between *Watkins* and *Barenblatt* when *scienter* is a condition precedent to criminal conviction?

This is an important issue neither squarely raised in the *Wilkinson* or *McPhaul* cases nor indeed ever presented to this Court. Analogous situations in less compelling circumstances have been resolved in favor of defendants. *United States v. Mersky*, 80 S. Ct. 459; and *Continental Can Co. v. United States*, 272 F. 2d 312 (C. A. 2, 1959). Its

²A most provocative note, *Contempt of Congress and “Pertinency”: A Standard of Culpability*, 11 Stanford Law Review 164 (1958), indicates the complexity and substantiality of the point under discussion. See also Hall, *General Principles of Criminal Law*, pp. 359-360 (1947).

resolution in Petitioner's favor would affect the disposition of many similar cases now pending in the lower courts.³ Hence, the administration of federal justice will be advanced by a consideral resolution of the problem.

5. Since the petition was filed herein, this Court granted the petition for certiorari in the companion case of *Wilkinson v. United States*, No. 703, this Term.⁴ Each petitioner had been subpoenaed to appear in the same House Committee hearings, described as an inquiry into *Communist Infiltration and Activities in the South*. Each was charged with criticism of the House Committee. The connection of each with the Emergency Civil Liberties Committee was a central issue in the hearings. In each case, review of the Committee's Atlanta hearings as a whole would be necessary to determine the existence *vel non* of legislative purpose and pertinency. See *Barenblatt v. United States*, 360 U. S. 109, 123, 125, 132.

Each relies upon the First Amendment, the lack of legislative purpose and pertinency, and each urges that the decision in *Barenblatt v. United States*, 360 U. S. 109, was misconstrued and, alternatively, should be reconsidered. Consequently, there is no reason to treat the cases differently upon applications for certiorari.⁵

³ See e.g., *United States v. Popper*, D. D. C. Cr. No. 1053-59, *United States v. O'Connor*, D. N. J. Cr. No. 232-59 and *United States v. Yellin*, D. N. J. Ind. Cr. No. 3023.

⁴ Petitioner and Wilkinson were examined consecutively by the House Committee on its identical claims of legislative purpose (Hearings *supra*, pp. 2667, 2669, 2681, 2682), were tried consecutively in the District Court and argued their appeals consecutively.

⁵ The denial of certiorari in *Davis v. United States*, 361 U. S. 919, is inapposite to the present case. The *Davis* case was indistinguishable from *Barenblatt's*. He was called in the same investigation. His Petition, although later supplemented, only sought reargument of *Barenblatt*. His later Motion and Reply Briefs do not raise the many important issues presented by Petitioner herein.

We shall not join the Government in speculating as to whether criticism of the House Committee was the principal reason for the grant of certiorari in *Wilkinson*. It is enough that the identical issue is presented by the record herein (R. 33, 135-138, 160-161) and urged in the Petition herein [Pet., Questions Presented, No. 2-(ii)]. Further, Petitioner has raised several fundamental issues neither manifest in *Wilkinson* nor ever before decided by this Court. [See, e.g., Petition herein, Questions Presented, Nos. 1 and 2 (ii) (iii) and (iv).]

Nor is the similarity of several legal issues in the two cases reason for deferring consideration of this petition. See this Court's grant of certiorari in *Taylor v. McElroy*, 358 U. S. 918, notwithstanding the prior grant in *Greene v. McElroy*, 358 U. S. 872.⁶ Since the issues here presented are broader than in *Wilkinson*, there is no advantage in the proposed reduction of Petitioner to the status of an *amicus curiae*. Inherent in this Court's analysis of the facts in *Barenblatt* is a recognition that where constitutional rights are involved each petitioner is entitled to the most careful scrutiny of his individual record to determine where the "balance" of interest lies.

The Court below was of the opinion that Wilkinson's alleged activities "presented a more direct threat to the national security than those of which Barenblatt [and presumably Petitioner] was suspected." *Wilkinson v.*

⁶ See also the grant of certiorari in (1) *Dayton v. Dulles*, 355 U. S. 911, after the grant of certiorari in *Kent & Brichl v. Dulles*, 355 U. S. 881; (2) the grant of certiorari in *Quinn v. United States*, 347 U. S. 1908; *Bart v. United States*, 347 U. S. 911; and *Emspak v. United States*, 346 U. S. 809; and (3) the grant of certiorari in both *Abramowitz v. Brucker*, 354 U. S. 920 and *Harmon v. Brucker*, 353 U. S. 956.

In *Taylor v. McElroy*, *supra*, the Government consented to certiorari, by-passing the Court of Appeals, and noted, with much citation, "that the Court has granted such petitions in cases where the same issue was already before the Court in another case" (Memorandum for the Respondents, p. 5).

United States, 272 F. 2d 783, 787. For his was a refusal to answer any questions whatsoever. Without concurring in the lower Court's observation, we submit that where conduct so characterized has received the protection of this Court's review it would be most strange if Petitioner's more limited opposition to the Committee were denied review.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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April, 1960.

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Office Supreme Court, U.S.

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JAMES R. BROWNING, Clerk

IN THE

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No. 54

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IN THE
Supreme Court of the United States

October Term, 1960

No. 54

CARL BRADEN,

Petitioner,

vs.

UNITED STATES.

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Court of Appeals (R. 112-124) is reported at 272 F. 2d 653. The order denying rehearing was entered without opinion (R. 128). There were no opinions in the District Court.

Jurisdiction

The judgment of the Court of Appeals was entered on December 10, 1959 (R. 124). A petition for rehearing was denied on January 12, 1960 (R. 125). On February 2, 1960, Mr. Justice Black extended the time to file a petition for certiorari to March 12, 1960 (R. 148). The petition for certiorari was filed on March 10, 1960, and was granted on April 25, 1960 (R. 149). The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

Questions Presented

The petitioner was convicted of refusing to answer six questions of a congressional committee relating to his activities in furtherance of racial integration in the South, to his possible connection with a civil liberties organization, to his participation in a petition to the Congress, and to his possible relationship to a newsletter. The questions presented by his conviction are as follows:

1. Whether the First Amendment barred the committee from inquiring into petitioner's political and journalistic activities unrelated to possible overthrow of the government.

2. Whether the questions were pertinent to the inquiry, whether their pertinency had been explained to petitioner, and whether the issue of pertinency should have been left to the jury.

3. Whether there was a valid legislative purpose in the questions put to petitioner.

4. Whether the legislative authority for the committee's inquiry, as applied to the questions put here, is not too vague to serve as a basis for criminal prosecution.

5. Whether petitioner's refusal to answer was wilful in view of the fact that he relied upon the decision of this Court in *Watkins v. United States*.

Constitutional Provisions, Statutes and Rules Involved.

The constitutional provisions involved are the First, Fifth and Sixth Amendments.

The statutes involved are 2 U. S. C. § 192 (52 Stat. 942), as amended, Public Law 601, Section 121, 79th Cong., 2d Sess. (60 Stat. 828) and the relevant portions of Rule XI of the Rules of the House of Representatives, H. Res. 5, 85th Cong., 1st Sess. These statutes and the Rule are reproduced in Appendix A, *infra*, p. 48.

Statement of the Case

In the course of testimony before the House Committee on Un-American Activities, the petitioner was asked and refused to answer the following six questions (R. 4-5):

"And did you participate in a meeting here at that time?

"Who solicited the quarters to be made available to the Southern Conference Educational Fund?

"Are you connected with the Emergency Civil Liberties Committee?"

"Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?"

"Were you a member of the Communist Party the instant you affixed your signature to that letter?"

"I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?"

Thereafter, petitioner was convicted on six counts, each charging a wilful refusal to answer a proper question, in violation of 2 U. S. C. §192. The issue in this Court is whether petitioner's conviction was justified.

Petitioner was a field secretary of the Southern Conference Educational Fund (herein the "Southern Conference") (R. 90). He was also associate editor of its newspaper, the Southern Patriot, "a paper that disseminates information on integration in the South and about the people who are working for integration" (R. 90). He had previously served in various capacities as a journalist for daily

and labor newspapers (R. 90). He had also devoted himself to the cause of integration.¹

Prior to the Committee hearing, held at Atlanta, petitioner and his wife, who was also a field secretary of the Southern Conference (R. 108), signed a letter on the letterhead of the Southern Conference, which urged their fellow citizens to write their Senators and Congressmen to oppose three bills that would "nullify . . . a Supreme Court decision declaring state sedition laws inoperative. We know from our own experience how such laws can be used against people working to bring about integration in the South" (R. 107-108).

Similarly, prior to his appearance, two hundred prominent Negro leaders petitioned Congress against the announced Atlanta investigation of the House Committee on Un-American Activities, *infra*, p. 8 (R. 98-99). The Committee attributed to petitioner the preparation of that petition (R. 29). Its counsel criticized the petition as being

"for the purpose of precluding or attempting to preclude or softening the very hearings which we proposed to have here" (R. 29).

¹ In 1954 petitioner and his wife were indicted and he was convicted of sedition in Kentucky, as a direct result of helping a Negro family to purchase a house in a segregated suburb of Louisville. See Anne Braden, *The Wall Between* (1958).

The House Committee supplied the State prosecuting attorney with advice and nine of his key witnesses. See Transcript of Evidence filed as part of Record on Appeal in *Braden v. Commonwealth*, 291, S. W. 2d 843 (Kentucky C. A., 1956) pp. 43-157, 433-533, 547-768, 830-857, 866-881, 955-1009, 1019-1054, 1108-1133, 1138-1143, 1167-1200, 1210-1230, 1368, 1473-1474. The charges against petitioner and his wife were subsequently dismissed, *Braden v. Commonwealth*, *supra*, following this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497. As a result of harassment and prosecution resulting from his integration efforts in Louisville, petitioner was unemployed before assuming his post with the Southern Conference in 1957 (R. 90).

On July 30, 1958 petitioner was called as a witness by the Committee on Un-American Activities (R. 89). The subpoena was served upon him while he was vacationing at the seashore home in Rhode Island of Mr. Harvey O'Connor, a writer, and National Chairman of the Emergency Civil Liberties Committee, an organization concerned with the protection of civil liberties (R. 89, 91, 106).

Proceedings Before the House Committee

The authorization for the House Committee on Un-American Activities appears in Rule XI of the Rules of the House of Representatives, which in pertinent part reads as follows:

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The hearings to which petitioner was subpoenaed were directed by resolution of the full Committee to be held on the following subjects:

"1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and

wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National defense, and for internal security, when and if the exigencies of the situation require it.

"2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

"3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate." (R. 137-138)

The hearings opened on July 29, 1958 with a statement by the Committee's Chairman, Congressman Francis E. Walter, that the Committee was

"accumulating factual information respecting Communists, the Communist Party and Communist activities which will enable the Committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage and subversion. In addition, the Committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation." (R. 86)

Petitioner was called on the second day of the hearing (R. 89). Under examination by Richard Arens, Committee counsel, petitioner described the nature of his work, his background in journalism and his education (R. 90).

After stating where the Committee's subpoena had been served upon him, petitioner was asked to give "your immediate point of departure before you arrived in Rhode Island" (R. 91). Mr. Arens made an extensive statement purporting to explain to petitioner the pertinency of the question (R. 91-93). This in essence amplified Chairman Walter's statement, quoted above, and asserted the Committee's "understanding" that petitioner was a member of the Communist Party (R. 91). At the close of petitioner's testimony, Mr. Arens disclosed another reason for the questions. He said:

"We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing" (R. 110).

At the trial Mr. Arens said that the Committee also sought information to determine whether to "cite" the Emergency Civil Liberties Committee, of which petitioner's Rhode Island host, Mr. O'Connor, was chairman (R. 33). "Citation", it was made plain, meant a citation of the organization by the Committee as a so-called "Communist front" organization (R. 109-110).

Petitioner did not answer the question concerning the point of his departure to Rhode Island (R. 93) nor did he answer a number of other questions, including some questions not covered by the indictment. He justified his refusals by reference to his First Amendment rights; and by asserting the lack of pertinency of the questions to any legislative purpose (R. 91, 93, 94, 95, 99, 102, 105), the "same grounds" being given by him during the latter portion of his questioning (R. 102, 105, 106, 108). Early in the hearing he stated:

" . . . I am standing on the Watkins, Sweezy, Konigsberg and other decisions of the United States Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States, protecting my right to private belief and association." (R. 95)

Petitioner was asked about his connection, if any, with a petition to the House of Representatives signed by two hundred Negro leaders in the South, objecting to the then imminent Atlanta hearings of the House Committee. *Supra* p. 4. The petition expressed alarm at the Committee's coming to the South

"trying to attach the 'subversive' label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals * * * [I]f white people who support integration are labeled 'subversive' by Congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship."

The petition requested Congressmen

"to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood." (R. 98-99)

The letter was dated July 22, 1958, which was also the date of the issuance of petitioner's subpoena (R. 99).

Congressman Jackson, a Committee member, referring to its signers, charged that "[t]heir interest and major part [sic] does not lie with honest integrity" (R. 97). He added later "that there may conceivably be some of those who signed the letter who did not realize that it was sponsored by a Communist front" (R. 109); he offered them the opportunity "to withdraw their names from that letter before it becomes a part of the official archives of our Committee on Un-American Activities" (R. 109). Petitioner's attempts to discuss the Southern Conference were blocked by the Committee (R. 105, 109), which likewise prevented him from answering Congressman Jackson's charges against it. The justification was that the Congress-

man was "not making charges. He is making a statement for the record" (R. 109).

Mr. Arens inquired as to a December, 1957 meeting of the Southern Conference and, on the previously stated grounds, petitioner refused to answer (R. 102). This was the first of the six questions charged in the indictment:

"And did you participate in a meeting here at that time?" (Count 1, R. 102).

However, the pertinency to the subject under inquiry of this question and the questions in Counts Two and Five, also dealing with the Southern Conference, was not explained to petitioner.

Mr. Arens produced pictures of petitioner and his wife entering the building of the American Red Cross in Atlanta together with other persons, including Mr. Aubrey W. Williams. Mr. Williams is publisher of the Southern Farm and Home and was Director of the National Youth Administration in the Roosevelt administration (R. 104). Mr. Arens then asked the next question embraced in the indictment (R. 3-5):

"Who solicited the quarters to be made available to the Southern Conference Educational Fund?" (Count 2; R. 105).

Mr. Arens next sought to determine whether petitioner was connected with the Emergency Civil Liberties Committee, the organization headed by his host at Rhode Island. Two of these questions were the basis of the next two counts of the indictment:

"Are you connected with the Emergency Civil Liberties Committee?" (Count 2; R. 106) and

"Did you, ~~and~~ Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" (Count 4; R. 106).

Committee counsel had earlier referred to Mr. O'Connor as having been

" * * * identified as a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and another organization that has been cited by a congressional committee as a 'Communist front' " (R. 93).

No further explanation, however, of the pertinency of these two questions to the subject under inquiry was given to petitioner.

Mr. Arens then charged that petitioner, as a representative of the Southern Conference, had "promoted, stimulated, political pressure or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress" (R. 106). This was a reference to the letter by petitioner and his wife on the letterhead of the Southern Conference, which asked their fellow citizens to oppose certain bills. The Committee's counsel then inquired:

"Were you a member of the Communist Party the instant you affixed your signature to that letter?" (Count 5; R. 108).

Finally, Mr. Arens turned to the subject of the Southern Newsletter, a publication. He explained that one Feldman, "identified as a Communist", who lived in Chicago, was its editor, and that an application had been made on its behalf for a post office box in Louisville, petitioner's community (R. 108). Mr. Arens asked:

"I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?" (Count 6; R. 108).

For his failure to answer these six questions petitioner was cited for contempt (R. 142-148).

Proceedings in the District Court

Petitioner was indicted on December 2, 1958 under 2 U. S. C. §192 by a grand jury in the United States District Court, Northern District of Georgia, Atlantic Division (R. 3). He pleaded not guilty and moved to dismiss the indictment and for a bill of particulars (R. 5-6). The motion to dismiss the indictment was denied (R. 8). A bill of particulars described the subject matter of the investigation as follows:

"The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, Communist Party propaganda activities in the South, and entry and dissemination within the United States of foreign Communist Party propaganda." (R. 7)

Petitioner was tried on January 22, 1959 before District Judge William B. Sloan and a jury. Mr. Arens was the Government's only witness (R. 20). He testified that the Committee, in conducting its hearing, was seeking information with which it could consider certain legislative proposals, which he described as follows:

"A. One of the proposals which was then pending before the committee was in the form of a bill known as H. R. 9937 which, among other things, contained provisions undertaking to meet issues created by the Yates case, namely, the construction or interpretation of the word 'organizing'. If you want me to, I can give you a little further explanation of that, what was meant by organizing within the framework of the Smith Act.

Q. What about the Foreign Agents Registration Act? A. Well, within the purview of H. R. 9937 there were provisions which would have amended the Foreign Agents Registration Act. It would have amended the Smith Act. It would have amended the Immigration and Nationality Act. It would have amended a number of acts, the Internal Security Act being the principal, and it would have amended by

that bill in a number of particulars all dealing with communistic activities, communistic techniques, communist dissemination of propaganda." (R. 26)

Over objection by defense counsel, on hearsay grounds, he stated the Committee's "information" concerning Mr. Braden, which prompted the issuance of the subpoena.

"A. First of all it was our information that Mr. Braden was a member of the Communist Party, that he was engaged as a communist with an organization known as the Southern Conference Educational Fund which was the subject of investigation by the Internal Security Subcommittee which found in essence that the Southern Conference Educational Fund was for all intents and purposes the successor organization to the Southern Conference for Human Welfare which had been cited as a communist front. We had the information that Mr. Braden was a field representative for the Southern Conference Educational Fund. In that capacity he was going over the Southland covering a number of states setting up meetings, disseminating communist propaganda, doing communist work in the South. It was also our information that Mr. Braden was a contributor, a writer for a publication circulating in the South under communist auspices known as the Southern News Letter, the driving or leading persons of which were known communists. It was our information that Mr. Braden had in the period of time, a short time prior to the time he was actually subpoenaed or a subpoena was issued for his appearance, had left Louisville, Kentucky, which was his home, had then been on a tour in furtherance of Communist Party objectives at the behest and direction of the Communist Party. He had been there in Atlanta and he had been to New Orleans and that he was then enroute to confer with another communist by the name of Harvey O'Connor who was a leading figure and is now a leading figure in another organization controlled by the conspiracy known as the Emergency Civil Liberties Committee. That conference was scheduled to take place and did take place some place in Rhode Island. There are other

collateral and incidental factual items which we had, but I have given you the highlights." (R. 27-28)

The Assistant United States Attorney then inquired "Do you have any information relative to any specific letter or letters which Mr. Braden was circulating or purported to have circulated?" (R. 28).

The witness' answer was as follows:

"My recollection could well be refreshed by the record itself, but in essence it was at least one of the letters, one of the letters was a letter signed by Mr. Braden and another person urging congressional action of some kind. My recollection isn't too vivid on the exact contents of it, but one of the letters that I have in mind on that appears in the record some place. In addition to that, within this record it appears on page 18 of the record of United States Exhibit No. 9. In addition to that, it was our information that Mr. Braden, and again my recollection is not absolutely clear, but it is in general that he had something to do with the preparation and dissemination of petitions (sic; petitions?) which were circulated in the Southland for the purpose of precluding or attempting to preclude or softening the very hearings which we proposed to have here" (R.28-29).

Mr. Arens also stated in respect to petitioner that:

"It was my information that as a communist he in concert with at least one other person who was a communist had been in Atlanta in December of the preceding year at which time he was engaging in communist activities, part of which was to penetrate known (sic) communist organizations which was then a technique that we were undertaking to gain information about" (R. 30-31).

With respect to Mr. O'Connor, Mr. Arens stated:

"Yes, sir, it was our information that he was a communist, a member of the Communist Party and

in that capacity he served as the principal officer of the Emergency Civil Liberties Committee" (R. 31).

With respect to the Southern Newsletter, Mr. Arens stated:

"It was our information that the Southern News Letter was communist controlled, that the man who had the principal office in it, whether he was the editor or publisher, I don't know, a man by the name of Eugene Feldman, was a communist identified repeatedly as a communist, that Mr. Braden as a communist was a participant in the affairs of the Southern News Letter and we suspected, although we did not know, that Mr. Braden in addition to contributing to the Southern News Letter had something to do with the distribution of the Southern News Letter because there was a post office box number in Louisville where Mr. Braden lived to which the Southern News Letters were sent and from which we suspected they were redistributed, that one of the things that we wanted to elicit and attempted to elicit from Mr. Braden was his participation in that particular enterprise." (R. 31)

He also said that the type of information carried by the Southern News Letter was "Basically communist propaganda" (R. 32).

No facts were offered by the Government to support the conclusions set forth above. It did not establish or indicate the basis of Mr. Arens' information as to petitioner's membership in the Communist Party. On cross-examination Mr. Arens was vague as to the Southern Newsletter, stating merely that "you open it up as you would a leaflet, a pamphlet" (R. 35).

On the subject of the Emergency Civil Liberties Committee, Mr. Arens stated that one of his inquiries was "to determine whether or not the Committee on Un-American Activities would or should cite it. It has been cited by

the Senate Internal Security Subcommittee. Our particular committee has not cited it as yet" (R. 36).

He acknowledged that the Southern Conference "did participate in the integration movement" (R. 36) and stated that "It was our information then as it is now that the Communist (*sic*) including Mr. Braden as a Communist, were using the integration movement as a facade for Communist Party purposes" (R. 36). No facts were offered to support this conclusion.

Following Mr. Arens' testimony, and the reading of excerpts from the Atlanta hearings, counsel for the defendant moved for a judgment of acquittal which, after extended argument, was denied by the Court (R. 55). The matter was then argued to the jury and the Court delivered a charge (R. 66-75) to which the defendant excepted (R. 75). The jury rendered a verdict of guilty. The defendant made motions to arrest judgment and for a new trial, and the motions were denied (R. 76-78-79).

Proceedings in the Court of Appeals

After an appeal, the Court of Appeals for the Fifth Circuit affirmed the conviction of petitioner (R. 112-124).

Rejecting petitioner's claim that he had been called before the Committee not "for any legislative purpose, but rather for the purpose of harassing and opposing him because of his support of integration and civil rights and his opposition to the Committee and to pending legislation", the Court said that:

"Legislative purposes might well be furthered by a determination of whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system" (R. 118).

The Court also made reference to the "close relationship shown between the appellant and Harvey O'Connor, who was known to the Committee as a hard-core member of the Communist Party" (R. 118). It did not indicate any record support for this statement. It concluded, however, that since the Emergency Civil Liberties Committee "was stated to be a Communist front organization", its activities "with which the appellant would have been familiar if he was associated with O'Connor in the development for it of plans and strategies, were pertinent to the investigation being made by the Committee" (R. 119).

The Court held that the first four counts were pertinent to the subject matter of the inquiry and stated "We need not make any analysis of the pertinency of the questions upon which other grounds of the indictment were based" (R. 119). It rejected petitioner's claim "that the pertinency issues should have been submitted to the jury" (R. 121). It rejected his claim that he had a right to rely upon the *Watkins* decision, and that House Rule XI authorizing the Committee (R. 129-130) "was so vague and ambiguous that it could have no constitutional validity" (R. 124). A petition for rehearing was denied by the Court of Appeals (R. 125, 128).

Summary of Argument

1. The constitutional issue presented is how far a Congressional Committee may go in investigating a private citizen's political and journalistic activities not shown to have any connection with Communism: In *Barenblatt v. United States* this Court held that, despite objections based upon the First Amendment, a congressional committee may investigate the danger of overthrow of the Government, and that the Communist Party is so closely related to overthrow that a committee may ask a witness about past and present membership. In the present case, however, five of the six questions had no relationship to Communism, much less to overthrow. The remaining question involved Communist Party membership but only in the context of an inquiry into a petition directed to Congress, rather than an investigation of the Communist Party. Under this Court's rulings, questions subjecting beliefs and associations to compulsory exposure and publicity infringe the First Amendment unless justified by an overbalancing public interest. Since here no connection between the questions and possible overthrow was shown, no public interest justified the invasion of constitutionally protected fields. Accordingly, the questions were beyond the constitutional power of Congress.

2. Under 2 U. S. C. § 192 it was necessary to prove that the questions put to petitioner were pertinent to the subject under inquiry, which was Communist Party propaganda activities in the South. This the Government failed to do, as demonstrated in Point 1. Nor was the pertinency of the questions validly explained to petitioner. Moreover, the District Court erred in failing to submit the issue of pertinence to the jury. As an element of the crime, pertinency should not have been passed upon as a matter of law here, since evidence *aliunde* was introduced to establish it.

3. The questions put to petitioner were not in aid of any proper legislative purpose. The principal subject of the hearing was "colonization" by the Communist Party, apparently a term used to describe the spreading of propaganda to employees in a plant, industry or organization. Neither the chief witness on the subject, an undercover F. B. I. agent, nor any other witness at the hearings named petitioner as a member of the Communist Party or linked him to the Communist Party, or indicated any relationship between petitioner and the organizations or publication about which questions were put to him. The Committee sought to justify the calling of petitioner by the assertion that it was seeking (1) to investigate "political pressure" on the Congress—actually, criticism of the Committee by petitioner—and (2) to investigate two organizations about which petitioner was questioned, to determine if the Committee should "cite" them. These were not proper legislative purposes.

4. As applied to the questions petitioner was asked, Rule XI purportedly authorizing the Committee's investigation was too vague to meet the standards of the criminal law. In *Barenblatt* this Court held that, by reference to legislative history, it could be said that the Rule authorized an investigation into Communism and that in this respect it was not too vague to be understood by a witness. But even under *Barenblatt* no witness could be charged with notice that the Committee's "power of inquiry extended beyond the Communist Party to such topics as were under inquiry here, and the legislative history recounted in *Barenblatt* would not aid a witness in making this determination. Petitioner could not have ascertained whether the questions asked him were authorized by the Rule.

5. The element of willfulness involves deliberateness, and intent is essential if a refusal to answer is to be held criminal. Petitioner refused to answer the six questions involved here on the specific ground that they were beyond the Committee's power under this Court's decision in *Watkins v. United States*. Prior to *Barenblatt, Watkins* was widely understood to hold that the investigations of the Committee on Un-American Activities were not constitutionally authorized. A bona fide misunderstanding concerning a legal obligation to answer removes the element of willfulness, especially where petitioner relied upon a decision of the Supreme Court not yet limited by subsequent decision. No finding of criminal intent could be made here.

ARGUMENT

I

The Committee's inquiry violated the First Amendment.

This case presents the issue of how far a committee of Congress may go in investigating the political and journalistic activities of a private citizen. In *Barenblatt v. United States*, 360 U. S. 109, this Court held that a committee could, over objections based upon the First Amendment, require a witness to disclose present or past membership in the Communist Party.

In the present case the same committee went far beyond what was authorized in *Barenblatt* to inquire into activities completely unrelated to Communist Party membership. Petitioner brings his case to this Court in the belief that, even if such membership is a legitimate subject of inquiry, the First Amendment bars Congress from investigating and coercing the disclosure of political and associational matters unrelated to communism or over-

throw of the government, such as activities in the fields of racial integration in the South, civil liberties, petitions to the Congress, and journalistic contributions to and distribution of a newsletter.

A. The *Barenblatt* holding.

For a precise understanding of the constitutional issues here, it is necessary to turn first to this Court's decision in the *Barenblatt* case.

Barenblatt had refused to answer three questions dealing solely with his own past and present membership in the Communist Party, and also two other questions: Whether another individual was a Communist Party member (Count Three), and whether *Barenblatt* had been a member of the University of Michigan Council of Arts, Sciences and Professions (Count Five). 360 U. S. 114. This Court expressly declined to pass on the propriety of the latter two questions. The opinion states,

" . . . we find it unnecessary to consider the validity of his conviction under the Third and Fifth Counts, the only ones involving questions which on their face do not directly relate to . . . participation [in] or knowledge [of alleged Communist Party activities]." 360 U. S. 115

In *Barenblatt* this Court held only that Congress had power to investigate past or present Communist Party membership. The basis of this holding was the power of Congress to investigate the danger of violent overthrow of the Government. The Court's opinion was expressly limited to authorize only investigation of the Communist Party. The Court referred to

"the long and widely accepted view that the tenets of the Communist Party include the ultimate overthrow of the Government of the United States by force and violence . . .", 360 U. S. 128,

and it held,

"On these premises, this Court in its constitutional adjudications has consistently refused to view the Communist Party as an ordinary political party and has upheld federal legislation aimed at the Communist problem which in a different context would certainly have raised constitutional issues of the gravest character." *Id.*

The Communist Party, in other words, had been found to be so closely related to the danger of overthrow of the Government that it could be investigated under the power to investigate overthrow. This special status of the Communist Party was in large part the result of judicial notice which is reflected in such decisions as *Dennis v. United States*, 183 F. 2d 201, aff'd, 341 U. S. 494, 509, and *American Communications Association v. Douds*, 339 U. S. 382, 399-400, and specific Congressional findings with respect to the Communist Party, such as the Subversive Activities Control Act of 1950, Section 2, 64 Stat. 987-989, 50 U. S. C. § 781. See 360 U. S. 128.

Barenblatt, to repeat, was based upon what the Court found to be the special and unique status of the Communist Party. Because of the "close nexus" recognized by the Court "between the Communist Party and violent overthrow of government", 360 U. S. 128, it held that "congressional investigation into 'overthrow'", 360 U. S. 130, could validly inquire into Communist Party membership. The Court did not uphold the power of investigation in First Amendment areas except in the context of "overthrow," and, in that context, only with respect to the Communist Party itself.

It is petitioner's view that even the limited restriction upon the First Amendment rights upheld in *Barenblatt* is not constitutionally warranted. But in any event, the present case, involving investigation into activities not shown to be related to Communism, is far outside the scope of *Barenblatt*.

B. The objects of investigation in the present case.

The present indictment is based upon a refusal to answer six questions. In the resolution of the constitutional issue, it is necessary to determine whether the object of the questions was so closely related to possible overthrow of the Government as to justify invasion of First Amendment rights. Counts One and Three concern petitioner's activities in connection with the Southern Conference Educational Fund, an organization interested in social and racial problems in the South, and the Emergency Civil Liberties Committee, a national group concerned with protection of civil liberties. Counts Two and Four are similar except that they also involve the activities of persons other than the witness. Count Six was an inquiry into the witness' connection with a publication known as the Southern Newsletter (R. 4-5). None of these questions involved Communist Party membership in any way. The question in Count Five did involve Communist Party membership, but not as part of an inquiry into the Communist Party, which was the case in *Barenblatt*. The context of the inquiry in Count Five, as has been noted, was whether petitioner,

" * * * as a field representative or field organizer of the Southern Conference Education Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the congress * * * " (R. 106),

by sending the letter which solicited expressions to Congress of opposition to bills validating state sedition laws. The Committee asked, not simply whether petitioner was or had been a Communist Party member, as in *Barenblatt*, but whether he was a member "the instant you affixed your signature to that letter" (R. 108).

On their face, none of the objects of investigation in the present case had the slightest relationship to overthrow of the Government, the only legitimate object of investigation.

under *Barenpblutt*. It is therefore essential to determine whether there is any evidence in the record to establish such a relationship. For this purpose, we turn to the Committee's own statement of the purpose of the six questions.

C. The Committee's justification of the questions.

The general purpose of the Committee's investigation was restated by Chairman Francis E. Walter at the opening of the hearings on July 29, 1958 (R. 86-88). On July 30, at petitioner's hearing, it was once again stated by the Committee's staff director, Mr. Arens (R. 91-92). According to these statements, the Committee was studying various proposals for changes in internal security legislation, and, in that connection, the activities in the United States of the international Communist conspiracy. Mr. Arens sought to link the objectives stated by Chairman Walter and himself with the particular questions under examination here.

With respect to petitioner, Mr. Arens said at the hearing that it was the Committee's "understanding" that petitioner was a member of the Communist Party; that he had been so identified by "reputable, responsible witnesses;" that it was the Committee's "information" that petitioner had been propagating the Communist line in the South; that he had been "masquerading behind a facade of humanitarianism" and that the purpose of his activities was to further the international Communist conspiracy (R. 91-92).

The alleged links between the subject matter of the questions and Communism were also the subject of testimony by Mr. Arens at petitioner's trial. On the questions in Counts One and Two, Mr. Arens testified as quoted above, p. 12, that the Southern Conference Educational Fund had been "found" by another Congressional committee (the Senate Internal Security Subcommittee) to be "for all intents and purposes the successor organization to the

Southern Conference for Human Welfare which had been cited as a Communist front" (R. 27-28). With respect to the Emergency Civil Liberties Committee (Counts Three and Four) Mr. Arens testified that this organization had been "found" by the Senate Internal Security Subcommittee "to be a Communist front" and that his committee was determining whether there "might be sufficient quantity of information for the committee to itself cite the Emergency Civil Liberties Committee" (R. 33).

As for the letter soliciting communications to Congress, which was the subject of Count Five, Mr. Arens testified that, while everyone has a right to send letters and to petition Congress, the Committee wanted to know "what were the techniques involved [sic] by the Communist Party in procuring signatures and in disseminating the Communist Party line at the behest of the conspiratorial operation in the country" (R. 34). Finally, Mr. Arens said of the Southern Newsletter, the publication involved in Count Six, that "we knew [it] was Communist controlled and * * * was disseminating Communist propaganda * * *" (R. 34).

These allegations by Mr. Arens, however—and the record contains nothing more—do not suffice to establish the Committee's constitutional authority to compel the disclosures it here sought.

Even if the allegations had substance, and could be accepted at face value, they would not necessarily link the Committee's investigation to the Communist Party itself, much less to the overthrow of the Government. But the statements by Mr. Arens cannot, on the present record, be accepted as proof of the matters asserted. They are allegations only, mere statements of what the Committee believed to be true. No facts at all were offered in support of the allegations. It is in this setting of mere allegation and suspicion that this Court is required to determine whether the interests of national security require the surrender of First Amendment rights.

D. The Constitutional Issue.

In *Watkins v. United States*, 354 U. S. 178, in *Sweezy v. New Hampshire*, 354 U.S. 234, in *Barenblatt, supra*, and in *NAACP v. Alabama*, 357 U.S. 449, this Court set out the basic principles which govern decision here. First, the investigative power of government is subject to the limitations of the First Amendment. Second, investigation and exposure of beliefs, associations, political activities and the like constitute a restraint upon their free exercise. Third, such investigation, whether of individuals as in *Watkins*, or of organizations as in *NAACP*, is barred by the First Amendment unless the value of the investigation to the nation outweighs the injury to free speech and association. *Barenblatt*, as we previously noted, held that an investigation of Communist Party membership, as a measure of self-preservation against violent overthrow of the Government, was permissible despite the First Amendment, because of the substantial record of judicial and legislative findings concerning the Communist Party.

In the light of these principles, the constitutional issue presented by the present case is as follows:

Can a committee of Congress, purporting to act under its power to investigate overthrow of the Government, subject to investigation and exposure political and journalistic activities ordinarily protected by the First Amendment, without any more evidence to connect these activities to overthrow than the unsupported allegations that the activities are believed to be related to Communism?

In the present record there is nothing whatever to indicate that the investigation here would be of any value in protecting the nation from overthrow, and, therefore, nothing to justify the accompanying invasion of First Amendment freedoms.

To be specific, there is nothing in this record to show that the Southern Conference or the Emergency Civil Liberties Committee or the Southern Newsletter had the remotest connection with the Communist Party. There is nothing to suggest any connection between the petition to Congress and the Communist Party. Nor is there anything as to which judicial notice can be taken connecting any of these to the Communist Party.

If Congress can require answers to questions in connection with these organizations and activities, in the absence of a demonstrated and legitimate interest in the Government's securing information about them, a Congressional or state legislative committee might require any individual to expose his associations with any group or publication unpopular with the Committee and therefore an object of its suspicions—for example, the NAACP, the American Civil Liberties Union or the Carolina Israelite. Is it utterly far fetched to suggest that some committee might harbor suspicions that one of these had Communist tendencies—or even sincerely believe one to be a Communist front? Indeed, a like claim has been advanced by state investigating committees with respect to the NAACP; *Scully v. Virginia*, 359 U. S. 344, 350; *State of Florida v. Graham*, Cir. Ct. 2d Jud. Dist., Leon Cty., Fla.; and the Progressive Party; *Sweezy v. New Hampshire*, *infra*, p. 28, n. 3; and by the Senate Internal Security Subcommittee against the Sane Nuclear Policy Committee and Dr. Linus Pauling.²

Very recently this Court held unanimously that an attempt to force the NAACP to expose itself to unfriendly scrutiny was a violation of that organization's rights under the First Amendment. *NAACP v. Alabama* established

² *Pauling v. Eastland*, U. S. App. D. C. No. 15963, petition for certiorari pending, Oct. Term 1960.

that, absent a legitimate state interest in obtaining information, Government cannot inquire into the private affairs of a political organization. The existence of that interest cannot be inferred from hearsay claims of prosecuting officials. Therefore, unless the committee here had a legitimate interest in making an inquiry into the affairs of the Southern Conference, the Emergency Civil Liberties Committee and the Southern Newsletter, its investigation must be held a violation of the First Amendment under *NAACP v. Alabama*.

It is our basic constitutional position that, even under *Barenblatt*, the Committee could investigate only if it demonstrated by evidence a genuine connection with overthrow in pursuing its investigation. If a committee's undisclosed information or unsupported surmise will justify an investigation, then the protection of the First Amendment, so clearly asserted in *NAACP v. Alabama*, must yield to any committee which thinks or says that its investigation is legitimate. We say that the narrow exception carved out in *Barenblatt* cannot be brought into operation by a congressional committee any time it thinks or says, without evidence, that there may be some relationship between the object of its investigation and Communism. The Committee cannot be the sole judge of what and whether it may legitimately investigate. To uphold the present conviction based upon the flimsy justifications of this record would be to allow committees to roam at will through any organization or activity. This Court's opinion in *Barenblatt* could never have meant that.

Nor can any additional support for the present investigation be gained from the Committee's assertion of "information" it had that petitioner himself was a member of the Communist Party. In the first place, there is no

evidence of such membership in the record here.³ Secondly, even if petitioner were a Communist Party member, that fact could not justify a free-wheeling investigation into his organizations or other activities having nothing to do with the one element justifying any inquiry into them under *Barenblatt*:—i.e., overthrow of the Government.

Petitioner was asked about any Communist Party membership "at the instant" he signed a letter in which he and his wife asked its recipients to write to Congress. But there was no evidence on the face of the letter (R. 107-8) revealing any Communist propaganda in it, nor was there elsewhere in the record any evidence—as dis-

* There was no such testimony at the trial or at the Atlanta hearings. At petitioner's hearing Mr. Arens asked him whether a Mrs. Alberta Ahearn was in error when she testified before the Committee that while she was a member of the Communist Party she knew petitioner as a member. * Testimony by Mrs. Ahearn, however, does not appear in the published Atlanta hearings (*Communist Infiltration and Activities in the South, Hearings, 85th Cong., 2nd Sess., July 29, 30 and 31, 1958*). These hearings comprise Exhibit 10 in this case. See stipulation, R. 141). Contrast the situation in *Barenblatt*, where the petitioner "had heard the Subcommittee interrogate the witness Crowley * * * and had listened to Crowley's testimony identifying him as a former member of an alleged Communist student organization at the University of Michigan while they both were in attendance there." 360 U. S. 125; cf. 360 U. S. 135.

And compare the situation in *Sweezy*:

"The State Supreme Court illustrated the 'reasonable, or reliable' information underlying the inquiries on the Progressive Party by quoting from a remark made by the Attorney General at the hearing in answer to petitioner's objection to a line of questions. The Attorney General had declared that he had * * * considerable sworn testimony * * * to the effect that the Progressive Party in New Hampshire has been heavily infiltrated by members of the Communist Party and that the policies and purposes of the Progressive Party have been directly influenced by members of the Communist Party.' * * * None of this testimony is a part of the record in this case. Its existence and weight were not independently reviewed by the state courts." 354 U. S. 252, n. 13.

tinguished from hearsay claims—charging it to be such propaganda. Even under *Barenblatt*, therefore, and certainly under *Watkins* and *Sweezy*, there was no warrant for the Committee's question to petitioner concerning his status when he signed it. The right of petition would mean little if Congress could call every individual exercising the right of petition and ask him whether he was a Communist when he signed.

To sum up, then: Petitioner was here convicted for failing to answer questions not connected by any evidence with Communism, but trenching on his First Amendment rights. *Barenblatt* justified a narrow invasion of First Amendment rights for an inquiry into Communist Party membership, on the ground that the needs of national security and the danger of overthrow of the Government overbalanced the constitutional right in that instance. But where the questions infringe constitutional rights without demonstrable connection with Communism or overthrow of the Government, there is no justification for narrowing the Bill of Rights.

II

The questions were not pertinent to the subject under inquiry, and in any event their pertinency was not explained to petitioner. If pertinency were in issue, it was a matter for the jury.

It was incumbent upon the Government to prove that the six questions involved herein were "pertinent to the subject under inquiry". 2 U. S. C. § 192, *Watkins v. United States*, 354 U. S. at 214, *Barenblatt v. United States*, 360 U. S. at 123, *Sacher v. United States*, 356 U. S. 576, 577.

The bill of particulars recited a tripartite "question under inquiry" (R. 7), which repeated the essence of the authorizing resolution, *supra*, pp. 5-6. There was no claim

that petitioner was connected with, or that any question related to the first of its parts, "Communist colonization and infiltration" in Southern industry, or to the third, the entry and dissemination of "foreign Communist Party propaganda" (R. 7). Accordingly, the Government was required to prove pertinency to the remaining part, "Communist Party propaganda activities in the South" (*ibid.*).

We have already shown that there was no evidence of any valid link between the six questions put to petitioner and this subject of "Communist Party propaganda activities in the South" (Point I, *supra*, p. 23 ff). Certainly, "the pertinency of none of the * * * questions involved can be regarded as undisputably clear". Mr. Justice Harlan, concurring in *Sacher v. United States*, 356 U. S. 576, 578.

Although petitioner consistently objected on the grounds of lack of pertinency, *supra* p. 7, the pertinency of none of the questions was explained to him during his testimony as required by law. *Watkins v. United States*, 354 U. S. at 208-209, *Barenblatt v. United States*, 360 U. S. at 116, 123. While three of the questions charged here related to the Southern Conference (Counts 1, 2 and 5) nowhere was petitioner given a statement linking that organization to "Communist Party propaganda activities in the South". It was not until after the questioning had concluded (R. 109) that one Congressman asserted that the Southern Conference was a "Communist front" (R. 109), and on this point he was corrected by Committee counsel who stated that an asserted predecessor organization had been thus "cited" (R. 109-110). Thereafter, petitioner was asked no questions. Thus he had no reason to believe, at the time that the three questions were put to him, that they were pertinent to the subject under inquiry.

Two other questions related to a possible connection with the Emergency Civil Liberties Committee and its Chairman, Harvey O'Connor whom Committee counsel described as:

"a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and another organization that has been cited by a congressional committee as a Communist front." (R. 93).

This very description of Mr. O'Connor, equally unsupported, was held too vague to be pertinent in *O'Connor v. United States*, 240 F. 2d 404. Its pertinency is not enhanced by repetition here.

Mr. Arens was equally vague on whether the "citation" had been of the Emergency Civil Liberties Committee or of "another organization". Assuming the former, *arguendo*, a mere allegation of citation by one Congressional committee does not make pertinent another committee's inquiry into the subject. Further, except in connection with the statutory system of adjudication by a quasi-judicial agency (see Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. § 781ff., as amended) the term "Communist front organization" has no meaning. Cf. *United States v. Lattimore*, 215 F. 2d 847, *United States v. Lattimore*, 127 F. Supp. 405. Neither of the two organizations involved herein has been the subject of proceedings under that statute. See R. 34.

The pertinency of the remaining question, which concerned the Southern Newsletter, as explained to petitioner, is equally dubious. The sole connection attributed to him is that the publication had a post office box in Louisville, the city of petitioner's residence (R. 108), obviously a most remote connection.

Under the circumstances, "the conditions necessary to sustain a conviction for deliberately refusing to answer questions pertinent to the authorized subject matter of a congressional hearing are wanting". *Sacher v. United States*, *supra*, at p. 577. The trial court was required to grant petitioner's motion for a judgment of acquittal on this ground (R. 10). Its refusal to do so was erroneous.

The trial court, moreover, compounded its error by its charge that the questions were pertinent as a matter of law (R. 70). Since it did not grant petitioner's motion for acquittal at the end of the Government's case, the issue of pertinency was for the jury, since "all the elements of the crime charged shall be proved beyond a reasonable doubt." *Christoffel v. United States*, 338 U. S. 84, 89. It is a jury that must determine all factual issues upon which there is any evidence though the evidence may be uncontroverted. *Hodges v. Easton*, 106 U. S. 408; *United States ex rel. Toth v. Quarles*, 350 U. S. 11, 18, n. 10; *Brotherhood of Carpenters v. United States*, 330 U. S. 395, 408; *Ex parte Milligan*, 4 Wall. (71 U. S.) 2.

The reliance of the Court below upon *Sinclair v. United States*, 279 U. S. 263, as dispensing with the jury on this issue, was misplaced. That case did not involve a situation such as the present one where "evidence *aliunde* was introduced to prove pertinency";⁴ *United States v. Orman*, 207 F. 2d 148, 156.⁵

The courts below thus erred both in their ruling that pertinency had been established and that it was not for the jury to pass upon the issue.

⁴ Such evidence was introduced by the Government's examination of Mr. Arens, R. 32 (Count 1), R. 32-33 (Count 2), R. 33 (Count 3), R. 33-34 (Count 4), R. 34 (Count 5), R. 34-35 (Count 6). He was cross-examined at R. 35-38.

⁵ Cf. *Regina v. Goddard*, 2 F. & F. 361, 175 Eng. Rep. 1096 (N. P. 1861); *Regina v. Lavey*, 3 Car. & K. 26, 175 Eng. Rep. 448 (Q. B. 1856); *People v. Redmond*, 179 App. Div. 127, 129, 165 N. Y. Supp. 821, 823, appeal dismissed, 225 N. Y. 205, 127 N. E. 785. See *Materiality in Perjury as a Question of Law or a Question of Fact*, Leg. Doc. No. 65(G) at 22, Report N. Y. Law Rev. Comm. 303, 322 (1939); *United States v. Shinn*, 14 Fed. 447 (C. C. Ore. 1882); and Lillich, *The Element of Materiality in the Federal Crime of Perjury*, 35 Indiana L. J. 1 (1959).

The questions were not asked pursuant to a proper legislative purpose.

A Congressional committee may not subpoena a witness except for a legislative purpose. *Quinn v. United States*, 349 U. S. 155, 161; *McGrain v. Daugherty*, 273 U. S. 135, 173-174; *Kilbourn v. Thompson*, 103 U. S. 168, 190; *Watkins v. United States*, 354 U. S. 178; *Barenblatt v. United States*, 360 U. S. 109. See *Sweezy v. New Hampshire*, 354 U. S. 234.

A legislative purpose exists when a committee seeks information necessary for contemplated legislation or to oversee the governmental administration of existing legislation.

However, there may be investigations which are beyond the power of Congress. As this Court said in *Watkins*:

"There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress . . . Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible." 354 U. S. 178, 187.

And in *Barenblatt*:

"Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government, must exercise its powers subject to the limita-

tions placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights." 360 U. S. 109, 111.

In *Barenblatt*, this Court, while disinclined to consider the motivation of particular Congressmen, did consider itself duty bound to determine whether a legislative purpose existed. Thus, it said:

"* * * Having scrutinized this record we cannot say that the unanimous panel of the Court of Appeals which first considered this case was wrong in concluding that 'the primary purposes of the inquiry were in aid of legislative processes.' 240 F. 2d, at 881." 360 U. S. 109, 133.

We think that scrutiny of the record here will demonstrate that the primary purpose of the present inquiry was not in aid of legislative processes.

A. The Background of the Atlanta Hearings.⁶

In the context of the Atlanta hearings there was no legislative purpose in calling and examining petitioner. Realistically, his appearance may be said to be a "brief excursion" from the main flow of the Committee's Atlanta hearings.

Thus, the principal subject of those hearings was the issue of colonization. The witness on the subject, Armando Penha, defined a "colonizer" as one

"directed by the Communist Party to teach and spread propaganda in order to cultivate the mass workers within a plant or industry or legitimate organization," Hearings, July 29, 1958, p. 2611.

⁶ These hearings printed as *Communist Infiltration Activities in the South*, 85 Cong., 2d Sess., are the subject of a stipulation herein (R. 141), and will be referred to without use of the symbol "R."

⁷ *Sacher v. United States*, 356 U. S. 576, 577 quoting from the same case at 99 U. S. App. D. C. 360, 367, 240 F. 2d 46, 53.

Penha stated that he was a member of the Communist Party National Textile Commission and simultaneously an undercover agent of the Federal Bureau of Investigation (*id.*). The Committee also heard individuals identified in his testimony. But neither Penha nor the other "colonizers" nor any other witnesses testified concerning petitioner. Nor was any testimony elicited from witnesses with respect to the Southern Conference or the Southern Newsletter or the Emergency Civil Liberties Committee.

Whether there was a valid legislative purpose for the Atlanta "colonization" inquiry must be gauged against the fact that four months earlier Penha had testified publicly on the same subject and named the same colonizers, and that for several months previously he had been "in close contact" with the Committee. The public repetition of his testimony and the compulsory public appearance of persons whom he had twice named had the obvious purpose and effect of exposure.

Of the same character, basically, was the testimony of Mr. Irving Fishman, Deputy Collector of Customs. Mr. Fishman testified with respect to the third item, "foreign Communist Party propaganda" (R. 7). The legislative purpose in having him repeat testimony which he had given publicly eight times before¹⁰ is most questionable. In any event, Mr. Fishman was not asked about petitioner, and the latter, in turn, was not charged with importing and disseminating such foreign propaganda.

⁸ Hearings before the House of Representatives Committee on Un-American Activities on Investigations of Communist Activities in the New England area, Parts 1-3, 85th Cong., 2d Sess. 2090, 2111, 2371, 2388.

⁹ *Ibid.*, 2090-2091.

¹⁰ *Infra*, Appendix, p. 52.

• B. The Subpoena to Petitioner.

Petitioner is not required, however, to establish the non-legislative purpose of the Atlanta hearings as a whole. It is sufficient if the inquiry directed to him alone is devoid of legislative purpose. *United States v. Icardi*, 140 F. Supp. 383.

(i) The issuance of a subpoena to petitioner is part of a recently developing pattern of the Committee's use of its subpoena power to stifle its critics. Petitioner was examined concerning a petition to the Congress signed by "[t]wo hundred Negro leaders in the South" (R. 145) opposing its Atlanta hearings (R. 145)¹¹ and his association with the Chairman of the Emergency Civil Liberties Committee, an organization which has exchanged extensive criticism with the House Committee¹² (R. 33, 91-93, 106). The House Committee's Annual Report criticizes the Emergency Civil Liberties Committee specifically for its "avowed purpose . . . to abolish the House Committee on Un-American Activities and discredit the F.B.I." (1958 Annual Report, p. 34. H. Rep. 187).

Another critic of the Committee, Frank Wilkinson, was subpoenaed solely because he had come to Atlanta to express his opposition to the Committee. *Wilkinson v. United States*, 272 F. 2d 783, certiorari granted, Oct. Term 1960, No. 37. The Court below has held it proper for the Committee to subpoena one "engaged in aggressive opposition to the continued functioning of the Committee". *Wilkinson v. United States*, 272 F. 2d 783, 787.

More recently, the Committee subpoenaed Harvey O'Connor, Chairman of the Emergency Civil Liberties Committee, because he was about to deliver a public speech

¹¹ The full letter appears at R. 107-108.

¹² See e.g. the Committee's pamphlet entitled *Operation Abolition* (Nov. 8, 1957), an attack upon its critics.

critical of the Committee (Hearings House Committee on Un-American Activities, 85th Cong. 2d Sess. on *Communist Infiltration and Activities in Newark, N. J.* (1958), pp. 2757 *et seq.*) and indicted him for failure to appear. *United States v. O'Connor* (D. N. J. Crim. No. 232-59). The Committee charged that Mr. O'Connor "intended nevertheless to discredit and to suggest a defiance of the Committee" (*Id.* at 2900) and that petitioner herein "had about the same things in mind, but he at least appeared" (*Ibid.*).

Lèse majesté is not a justification for a legislative inquiry. The decision below is a far cry from this Court's decision in *McGrain v. Daugherty*, 273 U. S. 135, and from the reasoning in Dean Landis' landmark article, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153 (1926). This case presents an issue critical to the democratic process—the extent to which Congress intended and the Constitution permits use of the subpoena power to examine the sovereign people in retaliation for their expressed criticism of certain elected officials. See *Chisholm v. Georgia*, 2 Dallas (2 U. S.) 419, 472; *Yick Wo v. Hopkins*, 118 U. S. 356, 370.

(ii) The second non-legislative purpose was to determine whether there was "sufficient quantity of information for the Committee to itself cite the Emergency Civil Liberties Committee" as a subversive organization (R. 33). Similarly, the Committee's counsel stated: "We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing" (R. 110). Even if "citation" were a governmental function under our Constitution (*Cf. Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123; *Communist Party v. Subversive Activities Control Board*, Oct. Term, 1960, No. 12), such a "direct condemnation by the legislature without any judicial action" [Chafee, *Three Human Rights in the Constitution* (1956) 93], is a bill of attainder completely out-

side the legislative process. See *Ex parte Garland*, 71 U. S. 333; *United States v. Lovett*, 328 U. S. 303.¹³

The Founding Fathers shared this view, with specific respect to an attempted legislative condemnation of political groups. In the early days of the Republic there was considerable public hostility toward the so-called "Democratic Societies," which participated in the Whiskey Rebellion in Pennsylvania and subsequently formed the bulwark of the movement behind Thomas Jefferson. Indeed, after these "self-created societies" had been roundly castigated by President Washington, Annals of Congress (3rd Cong., 2nd Sess., Nov. 1794), p. 899, it was proposed in the House of Representatives that they be censured. *Id.* Madison successfully objected, arguing, "It is in vain to say that this indiscriminate censure is no punishment . . . Is not this proposition, if voted, a vote of attainder?" *Ibid.*, p. 934. See Brant, James Madison, Father of the Constitution (1950) 417-419.

(iii) The Committee claims the right of testimonial compulsion to investigate "political pressure, or attempted political pressure, on the United States Congress with respect to security measures pending in the Congress" (R. 106).¹⁴ This is a distortion of the constitutional relationship between the citizen and the State. It is the antithesis of the "free political discussion . . . [which is] the very foundation of constitutional government". *De*

¹³ Cf. *Methodist Federation of Social Action v. Eastland*, 141 F. Supp. 729, where a three-judge statutory court declined to decide the bill of attainder issue because the remedy sought was an injunction against a Government publication; see particularly the scholarly dissenting opinion of Judge Wilkins, 141 F. Supp. at 732.

¹⁴ Correspondingly, the Vice Chairman of the Internal Security Subcommittee of the Senate has been conducting hearings to determine whether the Sane Nuclear Policy Committee's statements to Congress and the public are to be discounted because of the possibility that Communists may have supported Sane. See *Pauling v. Eastland*, *supra*, n. 2.

Jonge v. Oregon, 299 U. S. 353, 365. "Un-American propaganda activities" are quite different from such "attempted political pressure"; see *United States v. Josephson*, 165 F. 2d 82, 87-88, cert. den. 333 U. S. 838, reh. den. 333 U. S. 858).

To read the House Committee's mandate so broadly would violate "the freedoms guaranteed by the First Amendment—freedom to speak, publish and petition the Government", *United States v. Harriss*, 347 U. S. 612, 625.

The only judicial support of this broad Committee power is found in the opinion below and the *Wilkinson* cases. Indeed, the Court below so clearly regarded petitioner's opposition to pending legislation as a justification for the retaliatory subpoena that it reproduced the entire letter of opposition in the opinion (R. 116). This case thus presents far more sharply and unavoidably than *United States v. Rumely*, 345 U. S. 41, the important issue of whether the Congress intended and the Constitution permits this punitive use of the power to subpoena and cross-examine private citizens. We submit that the answer must be in the negative.

(iv) The Committee's extraordinary claim of power to investigate petitioner's motives in supporting integration and civil rights (R. 91-92) would establish an equally pernicious limitation upon the right of citizens to associate, petition and speak, and even think. The Court below agreed with the Government that the Committee could investigate "whether organizations ostensibly active in championing timely objectives, such as integration and civil rights, are in fact being used for the spread of the propaganda of a foreign dominated Communist organization with subversive designs upon our governmental system" (R. 118).

Increasingly, since *Brown v. Board of Education*, 347 U. S. 483, governmental bodies have attempted such censor-

ship in the guise of registration laws and legislative investigations. See *Shelton v. Tucker*, Oct. Term 1960, No. 14; *National Assn. for the Advancement of Colored People v. Alabama*, 357 U. S. 449; *Bates v. City of Little Rock*, 361 U. S. 516; Public Hearings of the State of Louisiana Joint Legislative Committee, *Subversion in Racial Unrest*, March 6-9, 1957.¹⁵ The decision below would accomplish this very result. It is also in conflict in principle with this Court's decision in *DeJonge v. Oregon*, 299 U. S. 353, protecting the exercise of constitutional rights regardless of challenged auspices.

In Appendix B to this brief we have summarized factual material of public record, to show that the questioning of petitioner was part of a pattern of non-legislative activity by this Committee. The facts show that the abuse of authority here was not an isolated instance but a regular practice.

The issue thus may be viewed in the context of the entire group of Atlanta hearings whose dubious characteristics we have noted. It is unnecessary for the present, however, to decide whether the hearings as a whole lacked a legislative purpose. For as a minimum a legislative purpose must be shown in the investigation of petitioner himself. This was indisputably lacking.

IV

As a standard of criminal conduct Rule XI is fatally vague in its present application.

This Court held many years ago that Congress has inherent power to conduct investigations and to order its Sergeant-at-Arms to punish recalcitrant witnesses, *Anderson v. Dunn*, 6 Wheat. (19 U. S.) 204. But when Congress

¹⁵ Other relevant material is documented in *Scull v. Virginia*, *supra*, Petitioner's Brief, pp. 41-75.

resorts to the courts and the processes of the criminal law to enforce penalties against a recalcitrant witness as it has done here under 2 U. S. C. § 192, it must observe the strict standards of the criminal law. Specifically, House Rule XI, treated in conjunction with 2 U. S. C., § 192, must be read as a criminal statute. *Sacher v. United States*, 356 U. S. 576, 577. See also *Watkins v. United States*, *supra*, at 208.

To be valid Rule XI must establish a standard of conduct that is not so vague and indefinite that "men of common intelligence must necessarily guess at its meaning and differ as to its application". *Connally v. General Construction Company*, 269 U. S. 385 at 391. Vagueness is especially pernicious where, as here, First Amendment rights are involved. *Burston v. Wilson*, 343 U. S. 495.

In both *Watkins* and *Barenblatt* this Court had occasion to consider the issue of vagueness of Rule XI. In *Watkins* the Court said: "It would be difficult to imagine a less explicit authorizing resolution." 354 U. S. 202. In *Barenblatt* the Court considered the resolution in the context of an investigation of membership in the Communist Party. The Court found it necessary to look to the legislative history of the resolution in order to give it an ascertainable meaning. It referred to debates on the original authorizing resolution in the 75th Congress, to seventeen House Reports from the 76th Congress to the 85th Congress and to twenty-three House Resolutions over the same period. This legislative history, the Court held, impelled the conclusion that the Committee possessed "legislative authority to conduct the inquiry presently under consideration . . ." i.e., into Communist Party membership. 360 U. S. at 122.

Even if Rule XI may be thus understood to authorize an investigation into Communist Party membership, we think it cannot possibly be said to authorize, with the clarity essential to a criminal statute, an investigation

into political and journalistic activities which were the focus here. When petitioner was called upon to answer the six questions forming the basis of the present indictment, he had the right to know whether those questions were authorized by the House Rule. That Rule, in our opinion, does not establish with sufficient clarity the power of the Committee in this instance to investigate the Southern Conference, the Emergency Civil Liberties Committee, petitions to Congress or the Southern Newsletter. For the Rule does not specify any categories of inquiry into which these topics might fall, and there is no evidence, as has been shown, linking them or the petitioner to Communism.

Perhaps, in the light of much legislative history, a witness could be expected to know if the Committee was authorized to investigate the Communist Party, as the Court held in *Barenblatt*. But it would be difficult if not impossible for him to determine whether or not the Rule also permits the investigation undertaken here.

We say, in other words, that even if the witness Barenblatt was on notice that questions concerning the Communist Party were authorized by Rule XI, the petitioner here was not on notice that a broad-ranging inquiry into other First Amendment areas, such as the questions asked of him, were authorized.

We need only add that if the Rule were construed to cover the investigation undertaken in the present case, it would suffer from the vice of general vagueness because it would then possess well nigh unlimited scope. The Court need not reach this issue here. The point is that the Rule was too vague to permit petitioner to determine whether he was committing a crime at the time he refused to answer the six questions in the present indictment. Congress, having invoked the processes of the criminal law, cannot require a witness to guess whether or not he will be guilty of a crime when he attempts to assert his constitutional rights.

V

Petitioner's justifiable reliance on the *Watkins* ruling precluded a finding of wilfulness in his failure to answer.

Petitioner was subpoenaed in July, 1958, about a year after this Court's decision in the *Watkins* case. That decision was widely greeted as holding that the questions put to *Watkins* violated his rights under the First Amendment in that they constituted an unjustified invasion of his rights of free speech and free assembly. The view that the Committee could not continue to operate as it had under the then enabling resolution was held not only by responsible press opinion,¹⁶ but also by members of Congress,¹⁷ legal scholars¹⁸ and members of the federal judiciary.¹⁹

¹⁶ For example, see editorials in the *New York Times* on June 18, 19 and 23, 1957; *New York Mirror*, June 18, 1957; *New York Post*, June 18, 1957; *New York World Telegram & Sun*, June 18, 1957; *Washington Evening Star*, June 18, 1957; *The Nation*, June 29, 1957, page 558; *The Nation*, July 20, 1957, page 26.

¹⁷ Among many others, see the remarks of Congressmen Scherer and Jackson in the Congressional Record of June 27, 1957. Both were members of this Committee.

¹⁸ See e.g. Fleischmann, *Watkins v. United States and Congressional Power of Investigation*, 9 *Hastings L. R.* 145, and *Comments* in 71 *Harvard L. R.* 141, 56 *Michigan L. R.* 272, 24 *U. of Chicago L. R.* 740, 33 *Temple L. Q.* 108, 36 *North Carolina L. R.* 479.

¹⁹ Prior to the time petitioner testified, Judge Youngdahl had decided *United States v. Peck*, 154 *Fed. Supp.* 603, and a unanimous panel of the Court of Appeals for the District of Columbia had decided *Singer v. United States*, 247 *F. 2d* 535, 101 *App. D. C.* 129, vacating the judgment in 244 *F. 2d* 349, 100 *App. D. C.* 260.

Petitioner, in refusing to testify, explicitly relied upon this Court's decision in the *Watkins* case, among others. (R. 95). The *Barenblatt* decision, in June, 1959, came nearly a year after his appearance.

Appellant's reliance on *Watkins* negated the criminal intent required by 2 U. S. C. § 192. That section "like the ordinary federal criminal statute requires a criminal intent—in this instance, a deliberate, intentional refusal to answer". *Quinn v. United States*, 349 U. S. 155, 165. But there does not here exist "the element of deliberateness necessary for a conviction under Section 192 . . .". *Em-spak v. United States*, 349 U. S. 190, 202. See also *United States v. Lamont*, 18 F.R.D. 27, aff'd on other grounds, 236 F. 2d 312.

A direct analogy will be found in the two *Murdock* cases, *United States v. Murdock*, 284 U.S. 141, and 290 U.S. 389. In the first case, this Court overruled a district court's dismissal of an indictment under §1114 (a) of the Revenue Act of 1926, based upon a refusal to give information to the Internal Revenue Bureau. The Court held that the ground of the refusal, the possibility of incrimination under state law, was insufficient.

In the second case, the Court upheld a reversal of *Murdock*'s conviction because he had acted in good faith and therefore his refusal was not wilful. Said the Court:

"The word [wilfully] often denotes an act which is intentional, or knowing, or voluntary as distinguished from accidental. But, when used in a criminal statute, it generally means an act done with a bad purpose. . . ."

"The word is also employed to characterize a thing done without ground for believing it is lawful (*Roby v. Newton*, 121 Ga. 679, 49 S.E. 694, 68 L.R.A. 601), or conduct marked by careless disregard whether or not one has the right so to act. . . ."
290 U.S. 389 at 394-395).

"Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct. And the requirement that the omission in these instances must be wilful, to be criminal, is persuasive that the same element is essential to the offense of failing to supply information" (290 U. S. 389 at 396).

The analogy is further illustrated by the Court's comment upon the first *Murdock* case:

"It follows that the respondent was entitled to the charge he requested with respect to his good faith and actual belief. Not until his court pronounced judgment in *United States v. Murdock*, 284 U.S. 141, had it been definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law" (*Ibid.*).

In the second *Murdock* case, 290 U.S. at 397, the Court distinguished *Sinclair v. United States*, 279 U.S. 263, on which the court below here relied (R. 122). It pointed out that 2 U. S. C. § 192, under which the *Sinclair* prosecution (like the present prosecution) was brought, did not require wilfulness, at least in that portion of the statute relating to a refusal to answer questions. This distinction perhaps might have been a valid one until this Court, in *Emspak and Quinn*, *supra*, read the second part of Section 192 as including the element of wilfulness.²⁰

²⁰ Based upon *Emspak and Quinn*, District Judge Weinfeld in *United States v. Lamont*, *supra*, 18 F. R. D. at 32, held that "wilfulness, or a deliberate intentional refusal to answer, was an essential element of the offense", to be pleaded and proved. *United States v. Deutsch*, 235 F. 2d 853, 98 App. D. C. 356, dispensed with a charge of wilfulness in the indictment, holding the words "unlawfully refused" to connote wilfulness. The present indictment, following *Lamont* rather than *Deutsch*, charges the defendant with having refused to answer "knowingly, willfully and unlawfully" (R. 4).

In any event, *Sinclair* was not a case like the present where the litigant "had a right to repose upon the decision of the highest judicial tribunal in the land", *Harris v. Jex*, 55 N.Y. 421, 424, discussed in Cardozo, *The Nature of the Judicial Process*, 147 (1928). Between the two legal tender decisions of *Hepburn v. Griswold*, 8 Wall. (75 U.S.) 603, and *Knox v. Lee*, 12 Wall. (79 U. S.) 457, "[m]ost courts in a spirit of realism have held that the operation of the statute has been suspended in the interval", Cardozo, *ibid.* With a criminal conviction here at issue, and scienter a prerequisite, equal considerations apply to one who, before *Barenblatt*, relied on *Watkins*.

The "bad purpose" necessary to provide criminal intent cannot exist under these circumstances. *United States v. Murdock*, *supra*, 290 U. S. at 394.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed with directions to grant petitioner's motion for a judgment of acquittal.

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Appendix A

2 U. S. C. Section 192, 52 Stat. 942, is as follows:

Refusal of witness to testify

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month or more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session, 60 Stat. 828 and House Resolution 5 of the 84th Congress is as follows in pertinent part:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"Power and Duties of Committees

"(1) All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively . . .

"Committee on Un-American Activities.

"(a) Un-American activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Appendix B

In Point III of this brief, we have argued that the questions directed to petitioner were asked not for any legislative purpose, but among other things (1) to retaliate against him for criticizing the Committee; (2) to "cite" the Emergency Civil Liberties Committee or the Southern Conference; (3) to expose the names of various individuals to publicity. In this appendix we have summarized evidence of public record but not in the record of this case, showing that such non-legislative inquiries are a regular practice of the Committee, not a rare departure from its usual activity.

A. The Committee has frequently stated that its purpose was to "expose" subversives.

On May 26, 1938, Congressman Martin Dies, in urging the adoption of H. Res. 282, 75th Cong., creating the Special Committee on Un-American Activities (the predecessor of the present standing Committee), said:

"I am not in a position to say whether we can legislate effectively in reference to this matter, but I do know that exposure in a democracy of subversive activities is the most effective weapon that we have in our possession." (83 Cong. Rec. 7570)

The Committee hearings and reports are replete with statements by the Committee and its members to this effect. Some of this material is referred to in *Watkins v. United States*, 354 U. S. 178 (fn. at p. 199) and in the dissent of Mr. Justice Black in *Barenblatt*, at page 163. The subject was discussed at considerable length in the petitioner's brief in *Watkins* at pages 39 to 52 thereof. See also the Joint Appendix in *Watkins* at pages 112 through 168. We shall refrain from listing additional instances of statements by the Committee that exposure constitutes its purpose; such evidence would be only

cumulative. ¹The Committee has never concealed its aims and hardly a hearing can be examined without producing additional statements duplicating in content those above referred to.

B. The Committee obtains the same information over and over again.

The Committee's practice in recalling the same witnesses several times is explicable only if its purpose is exposure. The Committee calls many witnesses for not one but for a series of appearances before it, frequently over a period of years, not because additional information is expected, but because additional exposure of "subversives" will result. This practice has been followed both with witnesses friendly to the Committee and with those hostile to it.

1. Perhaps the Committee's favorite witness in the past few years has been Irving Fishman.² He does not list names. Instead his testimony, which is substantially identical each time he testifies, relates to the Communist propaganda allegedly being imported into the United States.

John Lautner has also testified many times.³ He remembers scores of names which he gives forth quite

¹ Some of the publications of the Committee are titled to indicate this purpose. See, for example, Hearings entitled "Expose of the Communist Party of Western Pennsylvania", 81st Cong.; Hearings entitled "Expose of Communist Activities in the State of Massachusetts", 82nd Cong.

² He testified in the 84th Cong. at Washington, D. C. (p. 4693 ff.); at Philadelphia (p. 5422 ff.); and in San Francisco (p. 6044 ff.). In the 85th Cong. he testified at New Orleans (p. 70 ff.); at New York (p. 253 ff.); at Buffalo (p. 1534 ff.); at Boston (p. 2174 ff.); at Washington, D. C. (p. 2426 ff.); at Atlanta (p. 2635 ff.); and at Newark (p. 2788 ff.). In the 86th Cong. he testified in Puerto Rico (p. 1618 ff.).

³ In the 84th Cong., in New York at p. 6178 ff., 6233 ff. and 6338 ff.; in the 85th Cong. in New York at p. 275 ff., 650, 800, 2493 ff.; in Chicago at p. 485 ff.; in Gary at p. 1958 ff.

freely. He also relates a hair-raising story concerning the circumstances of the termination of his connection with the Communist Party; a story which was first told at the trial in *United States v. Flynn*, 216 F. 2d 354, at 362. This story has now been told at Chicago and Gary. His testimony, like Fishman's, is substantially the same each time he gives it except that additional names are produced on each occasion.

Matthew Cvetic has testified on four occasions in the 81st Congress.⁴ Barbara Hartle has testified twice in the 83rd Congress and twice in the 84th, each time listing many names.⁵ As in the case of Lautner there is no apparent reason for calling any of the witnesses more than once (if at all) except to secure publicly the names of additional persons.

2. Witnesses hostile to the Committee are also frequently called more than once, of necessity under Committee awareness that additional information cannot be obtained. The result however, frequently is widespread publicity which serves the exposure purpose of the Committee. Thus, subpoenas were repeatedly issued to Steve Nelson; the respondent in *Pennsylvania v. Nelson*, 350 U. S. 497, and the petitioner in *Mesarosh v. United States*, 352 U. S. 1,⁶ even though the Committee certainly does not expect to get any information from him. Sometimes a witness is called several times in conjunction with organizational

⁴ Hearings, House Committee on Un-American Activities, 81st Cong. at pp. 1195 ff, 2365 ff, 3007 ff and 3143 ff.

⁵ Hearings, House Committee on Un-American Activities, 83rd Cong. 6055 ff, 6127 ff, 6629-6650; 84th Cong. 6946-6958, 7051-7053.

⁶ Nelson was first called by the Committee in executive session on April 26, 1949 (Hearings, 81st Cong., p. 315). He was again called on June 8, 1949 (*ibid.*, p. 129 ff), and again on March 12, 1959 (Hearings, 86th Cong., p. 502 ff). He has given no testimony at any time.

problems of a trade union or other organization.⁷ Sometimes witnesses are recalled because they are prominent in the field of entertainment and hence can be "exposed" more than once with profit to the committee.⁸

The Committee lists repeatedly in its indices, reports and publications the same individuals who at one time or another signed a petition supporting an alleged Communist cause or attended a meeting of an alleged Communist-front organization.⁹ In this category is the Committee's "List of Signers of Statement Defending the Communist Party".¹⁰ The statement is in fact an appeal to the President and Congress to protect only the constitutional rights of Communists.

C. The Committee calls witnesses knowing that they will rely upon the First or Fifth Amendments.

The Committee knows or is in a position to know whether or not the prospective witness will answer questions. Its sources are any prior Committee testimony by the witness,¹¹ interviews between the witness and the Com-

⁷ For example, Leon Beverly, a leading officer of the United Packinghouse Workers, was called by the Committee in September, 1952, and recalled in May, 1959, both at times of considerable crisis in his union. Hearings, 82nd Cong., p. 3773 ff, 3774; 86th Cong., p. 562 ff, and see p. 516.

⁸ For example, Elliott Sullivan, an actor in New York, was called twice in a period of two weeks in the summer of 1955. Hearings—House Committee on Un-American Activities, 84th Cong., 1383-1393, 2325-2348.

⁹ See, e.g., the Committee's "Cumulative Index to Publications," 1938-1954, and the Supplement of 1955-1956, and the massive documentation entitled "Communist Political Subversion, Part 1" and "Communist Political Subversion, Part 2".

¹⁰ Communist Political Subversion, Part 2, p. 7188.

¹¹ See notes *ante* re Nelson, Beverly, Sullivan.

nattee's staff, correspondence with the witness,¹² and whether or not a witness has sought to communicate with the staff after being subpoenaed. If the Committee has any doubt, it may summon the witness to an executive session.

Notwithstanding such sources of knowledge, the Committee subpoenas the witness for a public hearing even where the witness has had an executive session in which he has declined to answer questions.¹³ Or transcripts of testimony taken in executive session at which witnesses have refused to reply are made public,¹⁴ occasionally long after the testimony was given.¹⁵ Such actions can have no purpose other than exposure.

D. The Committee calls witnesses publicly despite its knowledge of the facts secured from hearings in executive session or reports on them by informers.

The Committee calls witnesses to public hearings even though it has secured full information from them in executive sessions where they testified freely or in reports secured from other committee witnesses or Government agencies. It often appears from the hearing itself that a full list of names was supplied by the witness in executive

¹² Miss Lillian Hellman, Pulitzer Prize playwright, advised the Committee that she would assert her constitutional privilege if the Committee insisted upon questioning her with respect to other people. Nevertheless it called her publicly. Emerson & Haber, 1 Political and Civil Rights in the United States, 2d Ed., 737.

¹³ Hearings, 85th Cong., p. 726.

¹⁴ *Ibid.*, pp. 1903-1951.

¹⁵ *Ibid.*, 1937 ff.

session.¹⁶ The only purpose in repeating the list in open session is to secure publicity for and hence exposure of the persons alleged to be Communists.

E. The Committee's principal interest is in names.

The hearings conducted by this Committee purport to investigate Communist activities on the theory that they involve threats to national security. See *United States v. Josephson*, 165 F. 2d 82, 87-88, cert. den. 333 U.S. 838, reh. den. 333 U. S. 858. Nevertheless, the Committee prefers Communist "names" to Communist activities. It calls for names from witnesses who completely lack knowledge of the Communist Party's present activities.¹⁷

¹⁶ The following testimony in 1957 from a witness who had left the Communist Party in 1948 (Hearings, 85th Cong., p. 1506) is typical:

"Mr. Arens: Now during the course of your membership in the Communist Party did you know a number of people as Communists who were engaged in the communications field?"

Mrs. Greenberg: I did.

Mr. Arens: Have you conferred with myself and with other members of the staff with reference to the facts as you have known them?

Mrs. Greenberg: Yes, sir.

Mr. Arens: Do you have before you now a list of names of persons that you have given to the staff here, persons known by you to a certainty to have been members of the Communist Party?

Mrs. Greenberg: I have.

Mr. Arens: As to each of these persons, have you served with him or her in a closed Communist Party meeting?

Mrs. Greenberg: I have.

Mr. Arens: Would you kindly tell us the name of each of these persons, and give us just a word of description concerning each one of them." (85th Cong., p. 1510)

The witness then proceeded to list the names previously given to the Committee.

¹⁷ No less than ten witnesses called in 1957-1958 had left the Communist Party prior to 1941. Hearings, 85th Cong., pp. 414 ff., 762 ff., 824 ff., 833 ff., 880 ff., 1410 ff., 1432 ff., 1448 ff., 1455 ff., 1461 ff.

A witness who admits that he once was a Communist is pressed to name other persons similarly situated, and if he refuses, the Committee recommends his citation for contempt.¹⁸

It is common knowledge that Communist Party membership and prestige are at their lowest ebb. Stouffer, *Communism, Conformity and Civil Liberties* (1955); Shannon, *Decline of American Communism* (1957); Ginzberg, *Rededication to Freedom* (1959). The public revelation of the names of one-time Communists, invariably known to other Governmental investigative agencies as well as to the Committee, would not appear to be a legislative function.

F. The Committee's legislative work is minimal.

The Committee has considered an infinitesimal number of bills in its lifetime.¹⁹ Virtually all the legislative work

¹⁸ Many of the recalcitrant witnesses against whom the Committee has secured contempt citations have answered all Committee questions except as to the names of other persons (*Watkins v. United States*, 354 U. S. 178; *United States v. Miller*, 259 F. 2d 187; *United States v. Silber*, App. D. C. No. 15,779 (1960); *United States v. Ingerman*, pending D. C. N. D. N. Y.; *United States v. Turoff*, pending D. C. N. D. N. Y.).

¹⁹ Bills referred to House Committee on Un-American Activities

Total Number of Bills Referred to House Committees

83rd Cong. 1st Sess.	1	5471
83rd Cong. 2nd Sess.	3	4814
84th Cong. 1st Sess.	1	6580
84th Cong. 2nd Sess.	0	5876
85th Cong. 1st Sess.	4	9599
85th Cong. 2nd Sess.	1	3922

*Source: * Library of Congress, Legislative Reference Service, Digest of Public General Bills, Final Issues for 1953, 1954, 1955, 1956, 1957 and 1958. See also, Cumulative Index of Congressional Committee Hearings, (74th Cong. through 85th Cong.) (G.P.O., 1959) pp. 704-709.

which the Committee asserts it is considering or for which it claims credit is the responsibility of the Judiciary and the Foreign Affairs Committees.²⁰

The Committee's disinterest in legislation is apparent too from the character of the testimony before it. Congressional committees concerned with the legislative process depend principally upon the expert testimony of Government officials and private groups who analyze the proposed legislation and make their recommendations to the Congress. All this is done without use of the subpoena power. The contrast between this Committee's hearings on passports in 1956 and 1958 and the hearings of the House Committees on Foreign Affairs and the Judiciary demonstrates this point.²¹ The latter Committees examined high Government officials with the duty of presenting testimony to Congressional committees. The Un-American Activities Committee took *pro forma* testimony from the Administrator of the Bureau of Security and Consular Affairs and then proceeded to examine American citizens then or previously engaged in litigating their right to travel.

²⁰ See the Brief of *amicus curiae* Davis, et al. submitted in support of petition for rehearing in *Barenblatt v. United States*, *supra*; see also Calendars of the U. S. House of Representatives and History of Legislation, 85th Cong., Final Edition (G.P.O. 1959), re H. R. 3, p. 113; H. R. 13272, p. 179; H. R. 13760, p. 181; compare the 1958 Annual Report of the Committee, H. Rep. 187, 86th Cong., 1st Sess., pp. 88-95.

²¹ Compare hearings before subcommittee No. 1, House Committee on the Judiciary, 84th Cong., 2d Sess. on H. R. 9991, *U. S. Passports, Denial and Review* (May 10 and 28) with Hearings before Committee on Un-American Activities, 84th Cong., 2d Sess. and *Investigation of the Unauthorized Use of United States Passports* (May 23-25, 1956, p. 4303 ff; June 12-14, 21, 1956, p. 4597 ff). Congressman Walter presided over both sets of hearings. Compare Hearings before the Committee on Foreign Affairs, 85th Cong., 2nd Sess. and H. R. 13760 (July and Aug. 1958) and 86th Cong., 1st Sess. on H. R. 9096 (Aug. 1959) with Hearings before the Committee on Un-American Activities, 86th Cong., 1st Sess. on *Passport Security*, p. 569 ff.

The Committee did conduct hearings which led to the passage in 1950 of the Internal Security Act.²² The contrast between the expert testimony adduced at those hearings and the testimony it usually adduces is a marked one. An occasional exercise in the legislative process is insufficient to justify the overruling of constitutional rights over two decades.

G. The Committee conducts hearing on matters *sub judice*.

The passport hearings, *supra*, illustrate another Committee tendency—to conduct hearings with respect to matters which at the time are *sub judice*. In each such case its principal witnesses are persons who have matters pending before administrative or court agencies which will be determined by pending litigation. A few additional examples follow:

There is now pending before this Court the petition for certiorari in *Borrow v. Federal Communications Commission*, Oct. Term 1960, No. 403, involving the right of the Federal Communications Commission to impose a loyalty test upon applicants for the renewal of radio licenses. In August, 1960 the Committee subpoenaed a number of other persons with pending applications before the Commission which are awaiting a decision in *Borrow*.²³ The Committee was in possession of copies of their applications before the Commission.

Similarly the Committee has conducted hearings on the Coast Guard's screening of merchant seamen and marine radio operators²⁴ despite the pendency of litigation,

²² H. Rep. 1844, 80th Cong., 2d Sess., see pp. 3-4.

²³ Press release of Committee Chairman Walter, August 23, 1960; 106 Cong. Rec., No. 140, p. D706. Hearings not yet printed.

²⁴ 106 Cong. Rec., No. 102, June 6, 1960, p. D510. Hearings not yet printed.

Graham v. Richmond, 272 F. 2d 517, and *Homer v. Richmond*, App. D. C. No. 15,751 (1960).

In each case the Committee evidently secured from the government licensing agency the names of the persons engaged in administrative proceedings and proceeded to examine them as to their political backgrounds. If the determination as to the desirability of legislation were the objective, that was accomplished by the testimony of the agencies' representatives. The compulsory testimony of the citizen litigants served the function of exposure. In addition, it is difficult to blind oneself to the possibility of its effect on the pending cases.

H. Hearings are conducted on subjects outside the Committee's jurisdiction and in the face of the hearings and reports of other committees.

A Committee's practice in conducting hearings upon matters outside its jurisdiction is further evidence that its purpose is something other than legislation.

The Committee has an unusual record in this respect. It conducts hearings on passports, see *supra*, page 58, in the face of hearings by the Committee which has unmistakable jurisdiction over the matter. One subject of its Atlanta hearings was the proposed amendment of the Smith Act (see *Yates v. United States*, 354 U. S. 298) which was before the Judiciary Committee, H. R. 13272, 85th Cong.; see H. Rep. 2495, 85th Cong. Another subject at Atlanta was an additional proposed amendment to the Smith Act dealing with supersession (R. 26, 92; see *Pennsylvania v. Nelson*, 350 U. S. 497). The bill on supersession, H. R. 3, had been reported out by the Judiciary Committee as H. Res. 597 on June 15, 1958, H. Rep. 1878, 85th Cong., and had passed the House on July 17, 1958, 104 Cong. Rec. 14161, nearly two weeks prior to the Atlanta hearings.

I. Publicity is a prime Committee function.

The writings of the Committee show that its principal function is in the field of publicity. It has the largest committee staff and appropriations. It prints more copies of its hearings and reports than all the other committees together.²⁵ These reports customarily have nothing to do with legislation but consist of attacks against organizations and persons of whom the Committee disapproves, such as *Report on the National Committee to Defeat the Mundt Bill*, H. Rep. 3248, 81st Cong., 2nd Sess.; and *Review of the Methodist Federation for Social Action*, 82nd Cong., 2nd Sess., H. Rep. 1661. Only recently it supported the scandalous charge that Communists had infiltrated the Protestant clergy. *New York Times*, Feb. 19, 1960, p. 1, col. 6.

²⁵ The basic appropriation for this Committee has risen from \$125,000 (H. Res'ns 168, 624, 79th Cong.) to \$654,000 (H. Res'ns 137, 413, 86th Cong.). In addition, it secured special permission to print its publications in unusually large amounts, e.g.:

<i>Resolution</i>			
<i>Congress</i>	<i>Year</i>	<i>Amount</i>	<i>Publication</i>
H. Con. Res. 52			
81.1	1949	250,000	100 Things You Should Know About Communism in the U.S.A.
H. Con. Res. 98			
82.1	1951	65,000	Guide to Subversive Organizations and Publications
H. Con. Res. 99			
82.1	1951	500,000	100 Things You Should Know About Communism
H. Res. 220			
85.1	1957	60,000	Guide to Subversive Organizations and Publications

In contrast to a total absence of special printing authorizations for the important Judiciary and Foreign Affairs Committees, the House Committee has secured such authorizations as 1,500,000 copies (H. Con. Res. 52, 81st Cong., 1st Sess.), 540,000 (H. Con. Res. 98, 99, 82nd Cong., 1st Sess.) and 84,500 (H. Res'ns 168, 169, 170, 187, 228, 258, 86th Cong., 1st Sess.).

These reports for the most part have nothing whatsoever to do with legislation. They interfere directly with the exercise of First Amendment rights. One such report, *Communist Political Subversion*, contains an attack upon the American Committee for the Protection of Foreign Born which has been responsible for the representation in the courts of many aliens facing deportation (H. Rep. 1182, 85th Cong. 1st Sess.). Another report entitled *Communist Legal Subversion, the Role of the Communist Lawyer* (86th Cong. 1st Sess., Feb. 16, 1959) is an attack upon members of the Bar active in civil liberties cases.

The quantity of the reports and their titles are indicative of their purpose. Between 1938 and 1958, the Committee has issued about ninety reports and other publications (other than transcript of hearings) comprising about 10,000 pages. In only a handful of these is any legislation recommended or even discussed. The other reports are devoted exclusively to exposure. Their most prominent feature consists of lists of names of persons and organizations.

Some of these reports are devoted to specific individuals or organizations (Dr. Edward U. Condon,²⁶ the Methodist Federation for Social Action,²⁷ the National Lawyers Guild,²⁸ the Hawaii Civil Liberties Committee,²⁹ the Emergency Civil Liberties Committee,³⁰ etc.). Others are devoted to more general subjects. Typical is the 97-page Committee report issued August 16, 1957, entitled *Communist Political Subversion, The Campaign to Destroy the Security*

²⁶ March 18, 1948, 80th Cong.

²⁷ *Supra*, p. 61.

²⁸ H. Rep. 3123, 81st Cong., 2nd Sess.

²⁹ H. Rep. 2986, 81st Cong., 1st Sess.

³⁰ *Operation Abolition, supra*.

Program of the United States Congress. No legislation is recommended. The index to the report contains the names of about 350 individuals and another 250 organizations mentioned in it; some of them are the subject of extensive biographical comment.

Most of the Committee's reports are accompanied by an index of names alone. When the Committee prints its hearings, the print is accompanied by an index of names, not subjects.

The Committee's most voluminous publication is its *Cumulative Index to Publications of the Committee on Un-American Activities, 1938-1954* and the Supplement to that index covering the years 1955 and 1956. It too is actually an index to names. The 1938 to 1954 index contains the names of about 30,000 individuals and several thousand organizations; the Supplement contains approximately 12,000 names. Each of these individuals and organizations has been "mentioned" in a House Committee hearing or report. Anyone interested may, with the aid of these reference works, determine whether his employees, his fellow-workers, his union officials, his neighbors, his personal enemies or, for that matter, a Justice of his Supreme Court, have ever been referred to at a Committee hearing, and on what occasion.

The Committee also publishes a *Guide to Subversive Organizations and Publications* which, like the index, publicly lists those organizations disapproved of by the Committee.

These publications are utilized by federal, state and local officials in their own search for "subversive" persons. Echoes of these indices occur frequently in the records of this Court and the Courts of Appeal. For example, one of the charges against Greene was that he attended a dinner of an organization cited by the House Committee as a Communist front; one of the charges against Harmon was

that he was a member of an organization cited by the Committee (*Greene v. McElroy*, 360 U. S. 474, n. 5 at p. 478; *Harmon v. Brucker*, 355 U. S. 579, R. 3-4). Olenick received an undesirable discharge from the Army because, among other things, he read a newspaper "cited" by the Committee as a mouthpiece of the Communist Party (*Olenick v. Brucker*, 273 F. 2d 819, J.A. p. 8a). Additional instances of such use of Congressional Committee "citations" can be found in the file of most loyalty-security proceedings, whether they be of seamen being screened by the Coast Guard, soldiers being screened by the Army, defense employees being screened by the Industrial Personnel Screening Board, federal employees being screened by federal loyalty boards, municipal employees being screened by various state, county or local screening agencies, or members of the public being screened by the Passport Office.³¹

The Committee does not treat its processes of compiling the index as incidental; indeed it has even, as here, called witnesses for the express purpose of determining whether or not it should "cite" an organization as a "Communist front" (R. 110, 133, see *supra*, p. 7).

Nor is the material which the Committee publishes the full extent of its activity in this area. In its 1947 Annual Report, the Committee said:

"The Committee during the past two years, has assembled an exhaustive file on every known subversive individual and organization at work in the United States today. The Committee's system of cross-indexing, filing and master-filing is considered one of the outstanding systems of this type in the

³¹ See, e.g., Association of the Bar of the City of New York, *The Federal Loyalty-Security Program* (1956), p. 86; affidavit of Frances G. Knight, Director of the Passport Office, filed May 24, 1956, p. 28 A of Joint Appendix in *Stewart v. Dulles*, 248 F. 2d 602.

United States. The files of the Committee are used daily as sources of information by practically every investigative division of the Federal Government" (H. Rep. 2742, 79th Cong., 2nd Sess., p. 16).

As Professor Carr says: "Every time such a person makes a speech, publishes a book or article, lends his name as sponsor to some organizational activity which is reported in the press or otherwise comes to the attention of the committee staff *and seems significant to them*, another entry is added to the card file." (Carr: The House Committee on Un-American Activities, Cornell University Press, 1952, p. 254. Emphasis in original.) Professor Carr estimates that there may have been, in 1952, index cards on a million individuals. If so, there are, no doubt, many more by this time.

Robert Stripling, sometime Chief Investigator of the Committee, is quoted as having stated that about 20,000 persons had access to the files (Carr, *supra*, 256). Files cannot be kept confidential if so many persons are privy to them. The Committee makes no secret of the non-legislative use of its files. On August 21, 1959, Congressman Walter, Chairman of the Committee, publicly announced in calling off a proposed hearing on the subject of education in Southern California, that he was turning over information in the files of the Committee to the local school authorities for action.³² With respect to an apparently similar practice concerning petitioner, see *supra*, p. 4, n. 1.

³² The New York Times, Aug. 22, 1959, p. 15, col. 1.

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No. 54

In the Supreme Court of the United States

OCTOBER TERM, 1960

CARL BRADEN, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 54

CARL BRADEN, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (R. 112-124) is reported at 272 F. 2d 653.

JURISDICTION

The judgment of the court of appeals was entered on December 10, 1959 (R. 124), and a petition for a rehearing was denied on January 12, 1960 (R. 128). On February 2, 1960, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including March 12, 1960. The petition was filed on March 10, 1960, and certiorari was granted on April 25, 1960 (R. 149; 362 U.S. 960). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, possessing information that petitioner was an important member of the Communist Party who had engaged in Communist activities in the South, was authorized by the House of Representatives to subpoena and question him as to his membership and activity in the Communist Party, in the course of a duly authorized investigation into Communist activities in the South.

2. Whether the issue of actual pertinency should have been decided by the jury.

3. Whether the questions which petitioner refused to answer were pertinent to the subject under inquiry and whether petitioner was made aware of their pertinency.

4. Whether petitioner's refusal to answer was wilful as required by 2 U.S.C. 192.

5. Whether the questioning of petitioner at the subcommittee hearings violated his rights under the First Amendment.

STATUTE AND RESOLUTION INVOLVED

2 U.S.C. 192 (R.S. 102, as amended) provides:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or

who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

The pertinent provisions of Rules X and XI of the House of Representatives, adopted for the Eighty-fifth Congress, by H. Res. 5, 85th Cong. (R. 83),¹ are set forth at R. 129-134.

STATEMENT

Petitioner was charged in a six-count indictment (R. 3-5), returned in the District Court for the Northern District of Georgia, with having knowingly, wilfully, and unlawfully refused, in violation of 2 U.S.C. 192, to answer six questions pertinent to the matter under inquiry, asked him by a subcommittee of the House Committee on Un-American Activities.² Following a trial by jury, the petitioner was found guilty on all six counts (R. 10) and was sentenced to twelve months' imprisonment on each count, the

¹The Rules which the House thus specially adopted for the Eighty-fifth Congress were, in pertinent part, identical with its standing Rules X and XI, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828. It was during the Eighty-fifth Congress that the refusals to answer the questions here involved occurred.

²The subcommittee unanimously agreed that a report should be made of petitioner's contumacy to be submitted to the House of Representatives recommending that petitioner be cited for contempt (R. 142-143), and this report was approved and adopted by the full Committee (R. 144-145). The House certified the Committee's report to the United States Attorney for prosecution (R. 146-148).

sentences to run concurrently (R. 77-78). On appeal to the Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed. (R. 112-124).

The offenses here involved arose out of hearings held in Atlanta, Georgia, by a subcommittee of the Committee on Un-American Activities on July 29, 30, and 31, 1958, at which petitioner was subpoenaed to appear as a witness. For a detailed summary of these hearings, we respectfully refer the Court to the Statement in our brief in *Wilkinson v. United States*, No. 37, this Term, pp. 3-26, which quotes or describes: Rules X and XI of the standing Rules of the House of Representatives which gave the Committee its authority (pp. 3-4); the resolution of the Committee authorizing these particular hearings (p. 4); the opening statement of the Chairman of the Committee at the hearings (pp. 6-8); a summary of the questioning and testimony of witnesses appearing before and after petitioner, and the statements made by the subcommittee to them (pp. 8-24); and the closing statement of the Chairman of the subcommittee (pp. 25-26).²

²The other pertinent facts introduced at petitioner's trial are as follows:

The Staff Director of the Committee testified at petitioner's trial that the hearings in Atlanta were

² All of these materials were introduced at petitioner's trial through U.S. Ex. 10, which is the printed transcript of the hearings on July 29, 30, and 31, 1958, before a subcommittee of the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Communist Infiltration and Activities in the South." Instead of including this transcript in the record in petitioner's case, counsel have stipulated (R. 141) that reference be made to the record in *Wilkinson*, No. 37, at pp. 71-233.

called "to develop factual material respecting communist operations in the Southland, communist propaganda, communist techniques, communist infiltration, all for the purpose of having a fund of information with which the committee could appraise legislative proposals then pending before the committee either in the form of bills or in the form of suggestions and for the purpose of enabling the committee to fulfill its duty under the Legislative Reorganization Act of maintaining a constant surveillance over the administration and operation of the then existing Internal Securities Laws" (R. 26). He mentioned, in particular, H.R. 9937, 85th Cong., which was pending before the Committee and would have amended various existing statutes dealing with Communist activities.*

In his opening statement at the hearings, the Chairman of the Committee explained that the purpose of the hearings was to obtain information about Communist activities in the South which would be relevant to the Committee's consideration of existing and contemplated legislation (U.S. Ex. 10, pp. 2606-2607). The investigation was to be based on "[p]reliminary investigations by the staff of this committee [which] indicate that the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North" (*id.* at 2607).

The first witness at the hearings was Armando Penha, who was a member of the Communist Party

* See our brief in *Wilkinson*, No. 37, p. 16, note 7.

from 1950 to 1958 at the request of the F.B.I. and was a member of the Party's National Textile Commission. The Commission was "the leading body, nationally, that is set up for the purposes of controlling, coordinating, and supervising the infiltration and colonization within the textile industry, particularly within the South" (U.S. Ex. 10, p. 2609). He testified that the Party used "front" organizations, which are either formed by the Party or infiltrated and taken control of by it, "to undermine and harass our entire security system" (*id.* at 2623); that it was the aim and purpose of the Communist Party in the South to "agitate and use every means within their command to raise political and economic issues of the Negro people in order to create mass agitation and foment discord at the same time" (*id.* at 2612); that the Party, in attempting to bring pressure on the Congress, had been very effective in utilizing non-Communists to petition Congress in opposition to proposed legislation distasteful to that Party (*id.* at 2623-2624); and that Party activities in the South are directed from Party headquarters in the North (*id.* at 2627).

The next witness, Eugene Feldman, had been identified by Penha as a "colonizer" in the South for the Communist Party (U.S. Ex. 10, pp. 2619-2620). Feldman refused to answer virtually every question asked by the subcommittee, including whether "it is not a fact that you are the editor and publisher of the Southern Newsletter"; whether a document

* For a definition of a "colonizer," see U.S. Ex. 10, p. 2611, and our brief in *Wilkinson*, No. 37, pp. 9-10.

showed him by the subcommittee was a true reproduction of an application made by him as editor and publisher of that publication for a post office box in Louisville, Kentucky; whether the Southern Newsletter had a postal permit; whether a particular copy of the Southern Newsletter had been mailed by him from Chicago; whether he denied being a member and "colonizer" of the Communist Party; whether he knew a person named Perry Cartwright; and whether Perry Cartwright was an associate of his on the Southern Newsletter (*id.* at 2630-2633). Feldman was then asked and refused to answer whether he knew Carl and Anne Braden, of Louisville, Kentucky, and whether they were colleagues of his in the work of the Southern Newsletter in that area of the South (*id.* at 2633).

Subsequently, Feldman was asked another series of questions, including whether Don West, who had been identified by Penha as a member of the Communist Party (*id.* at 2627), was a contributor to the Southern Newsletter; whether West "ha[d] a definite connection with the Southern Newsletter," in light of a copy shown to the witness which included West among the contributors and had an article signed by him; whether Mr. and Mrs. Carl Braden were connected with the Southern Newsletter and whether they were Party members; and whether Perry Cartwright was a Party member (*id.* at 2634). The Chairman and Staff Director of the subcommittee stated that the Committee had information that Feldman was the editor of the Southern Newsletter, and that it was published

in Chicago and distributed from Louisville (*id.* at 2634-2635).

After hearing an intervening witness, the subcommittee called Perry Cartwright. He testified that he was business manager of the Southern Newsletter; that it had a circulation of about 2,100 in the southern states; that it was published in Chicago and mailed from Louisville; and that he was not a member of the Communist Party (U.S. Ex. 10, pp. 2644-2645, 2647). He refused to answer who was the editor of the Southern Newsletter because he refused to inform on others, but said that the fact that his and Feldman's name appeared on the publication together "should be answer enough" (*id.* at 2645-2646). He refused to answer whether Carl and Anne Braden were "connected in an official capacity with the Southern Newsletter" (*id.* at 2646).

Petitioner was the first witness called to testify on the second day of the hearings, July 30, 1958. The Staff Director of the Committee testified at petitioner's trial that, at the time he was subpoenaed, the Committee had the following information (R. 27-28):

First of all it was our information that Mr. Braden was a member of the Communist Party, that he was engaged as a communist with an organization known as the Southern Conference Educational Fund which was the subject of investigation by the Internal Security Subcommittee which found in essence that the Southern Conference Educational Fund was for all intents and purposes the successor organization to the Southern Conference for Human

Welfare which had been cited as a communist front. We had the information that Mr. Braden was a field representative for the Southern Conference Educational Fund. In that capacity he was going over the Southland covering a number of states setting up meetings, disseminating communist propaganda, doing communist work in the South. It was also our information that Mr. Braden was a contributor, a writer for a publication circulating in the South under communist auspices known as the Southern News Letter, the driving or leading persons of which were known communists. It was our information that Mr. Braden had in the period of time, a short time prior to the time he was actually subpoenaed or a subpoena was issued for his appearance, had left Louisville, Kentucky, which was his home, had then been on a tour in furtherance of Communist Party objectives at the behest and direction of the Communist Party. He had been there in Atlanta and he had been to New Orleans and that he was then enroute to confer with another communist by the name of Harvey O'Connor who was a leading figure and is now a leading figure in another organization controlled by the conspiracy known as the Emergency Civil Liberties Committee. That conference was scheduled to take place and did take place some place in Rhode Island. There are other collateral and incidental factual items which we had, but I have given you the highlights.

The Staff Director stated that petitioner "had something to do with the preparation and dissemination of petitioners [sic] which were circulated in the South-

land for the purpose of precluding or attempting to preclude or softening the * * * hearings" in Atlanta. He testified that "these petitions were circulated by communists as communists under communist direction and that in the process of the circulation and the procurement of the petitions, the communists were practicing a communist technique which the committee wanted information on. They were not interested in whether or not they were petitions, but our interest in presenting it to the committee was the communistic technique in failing to disclose that the solicitation of the commission was by people under communist discipline" (R. 29, 30). The Staff Director then reiterated that the Committee had information identifying petitioner as a Communist (R. 30).

The Staff Director described in considerable detail at petitioner's trial the information possessed by the Committee as to petitioner's activities and those of his associates on behalf of the Communist Party. He testified that petitioner had come to Atlanta, in December 1957, to infiltrate organizations as part of his Party activities; that Harvey O'Connor (see *infra*, pp. 12, 14, 20) was a member of the Communist Party and "in that capacity he served as the principal officer of the Emergency Civil Liberties Committee"; that the Southern Newsletter was Communist controlled, that its leader (either editor or publisher), Eugene Feldman, had been repeatedly identified as a Communist, and that it principally contained Communist propaganda (R. 30-32). The Committee also had information that petitioner

had participated as a Communist in the Southern Newsletter by contributing to it and apparently by helping to distribute it (R. 31). The Committee knew that the publication was sent to a post office box number in Louisville where petitioner lived and was redistributed from there; "one of the things that we wanted to elicit and attempted to elicit from [petitioner] was his participation in that particular enterprise" (R. 31).

On cross-examination at the trial, the Staff Director stated that the Committee knew that the Southern Conference Educational Fund devoted much of its energy on behalf of the integration movement, but said that its information was that the integration movement in this regard was being used "as a facade for Communist Party purposes. * * * It has been our experience within this particular instance that Communist [sic] use any movement that they can possibly wangle themselves into for the purpose of agitation and propaganda and for the purpose of the ultimate objectives of the conspiracy and not for the purpose [for] which it was set up" (R. 36-37).

After petitioner was sworn at the hearing,⁶ he gave his name and stated that he was a worker "in the integration movement in the South, having been employed by the Southern Conference Educational Fund * * *" as a field secretary (U.S. Ex. 10, pp. 2667-2668). He said that, at the time he was served with the Committee's subpoena, he was visiting Harvey O'Connor in Rhode Island, who, he said, was the

⁶ Petitioner was represented by two attorneys (U.S. Ex. 10, pp. 2667-2668).

national chairman of the Emergency Civil Liberties Committee (*id.* at 2668). When petitioner was asked from where he had departed to go to Rhode Island, he refused to answer on the ground that the question was not pertinent and violated his rights under the First Amendment (*id.* at 2668-2669). The Staff Director advised petitioner (*id.* at 2669-2670):

* * * I should like, for the purpose of making the record absolutely clear, to explain to the witness now the pertinency of the question.

Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H.R. 9937, which has numerous provisions which are being considered by the

Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting registration of Communists; some of these provisions undertake to tighten the security laws respecting the dissemination of Communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress² of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been identified as a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and other organizations that have been cited by a congressional committee as Communist fronts.

If you will tell us, sir, now of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the duties and responsibilities which it has upon it.

Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

Petitioner was asked and refused to answer, again on pertinency and First Amendment grounds, whether he was then a member of the Communist Party (U.S. Ex. 10, p. 2670). The Staff Director of the Committee then stated (*ibid.*):

I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar

questions which I am intending to propose to you.

The Staff Director and Chairman of the subcommittee each then repeated the latter statement in substance (*id.* at 2671). The Staff Director emphasized that petitioner's beliefs were not under investigation but only whether he was participating in an organization controlled by the Communist conspiracy.

Petitioner was asked and refused to answer, giving the same reasons, whether another witness, Alberta Ahearn, who was a former member of the Communist Party, had erred in saying that she knew petitioner as a Party member (U.S. Ex. 10, p. 2671). When petitioner also objected that "[t]he mandate of this committee is so vague that nobody knows what you are supposed to be investigating", the Staff Director stated "communism and Communists" (*ibid.*). Petitioner claimed that the subcommittee was investigating integrationists; Representative Jackson, a member of the subcommittee, answered that those subpoenaed had also been identified as Communists and the subcommittee was trying to determine that fact (*id.* at 2671-2672). He further explained to petitioner that Congress had instructed the Committee (*id.* at 2672):

to investigate the extent and scope of [Communist] propaganda activities within the United States. That is precisely what we are doing. And when you cast doubt, or attempt to cast doubt, on the relevancy of the question when you are in the position you are to influence public opinion through your writings—and I gather through your writings on behalf of the Commu-

nist Party—it is very clearly within the purview of this committee to inquire into those activities. I do not care what you think. I have not the slightest interest in * * * your opinions. * * *

What I am interested in, is what are you doing on behalf of the Communist Party? We are not going to be clouded, so far as I am concerned, by talking about integration and segregation. This committee is not concerned in that. This committee is concerned in what you are doing in behalf of the Communist conspiracy. It may be that your actions parallel, as the chairman said, a very humanitarian thing * * *.

Representative Jackson then again indicated that the hearings were investigating only Communist activity and said: “[L]et us not be clouding this discussion * * * that we are here as representatives of the United States Government to further, or to destroy, or to have anything to do with, integration. I resent it [petitioner’s claim] as an individual member of the Congress” (*id.* at 2673).

Petitioner read to the subcommittee an open letter to the House of Representatives protesting the Committee’s action in holding a hearing in Atlanta in an effort to harass supporters of integration (U.S. Ex. 10, pp. 2673–2674). He refused, however, to answer what he, as “an identified member of the Communist Party [had] to do with this letter”: “I will have to stand on my first amendment rights for private beliefs and association on the grounds that the question has no possible pertinency to any legislation” (*id.* at

2674). He refused to answer whether he had prepared the letter because of his First Amendment rights, the vagueness of the resolution establishing the Committee, and "the pertinency of the investigation and the legislative—" (*ibid.*). Representative Jackson then explained the reason for the questions (*ibid.*):

There is a very strong possibility that that letter was prepared by a Communist; and it points up one of the things that this committee has been trying to put across, that well-meaning people pursuing a very worthwhile goal are very frequently not sufficiently advised as to what they are doing when they lend their names to various petitions, letters, and so forth. A very strong likelihood exists—and we cannot know because of the refusal of the witness to answer whether he prepared this letter—but a strong likelihood exists that the letter in question was prepared under Communist direction; that those who signed it signed a document which was prepared by the Communist Party for their own purposes.

Petitioner testified that he was last in Atlanta in May 1958, as part of his work as field organizer or secretary of the Southern Conference Educational Fund (U.S. Ex. 10, p. 2675). He refused to state whether a meeting had been held in Atlanta at that time because of his First Amendment rights, the vagueness of the Committee's mandate, and "the question has no possible pertinency to any possible legislative purpose" (*ibid.*). Petitioner said that he had also been in Atlanta in December 1957, but refused to answer the question, "And did you partici-

pate in a meeting here at that time?" (count one.)' (*ibid.*). The reasons given were the First Amendment, the vagueness of the resolution establishing the Committee, and the lack of pertinency of the question, citing *Watkins v. United States*, 354 U.S. 178 (*id.* at 2675-2676). The Chairman of the subcommittee told petitioner that he was placing himself "in a position of saying that Congress has no right to inquire into the Communist conspiracy in America" (*id.* at 2676). The Staff Director added to his earlier explanation of pertinency (*id.* at 2676-2677):

Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for 8 years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a directive to penetrate non-Communist organizations, fine, patriotic, humanitarian organizations for

* The Staff Director explained the purpose of this question at petitioner's trial (R. 32):

We are attempting to elicit from Mr. Braden information respecting his participation as a communist in a meeting here in Atlanta for the purpose of developing information about the technique of communists in penetrating groups and organizations on behalf of the communist party. One of the things we had in mind to attempt to develop would be factual material which could be used by the committee in its appraisal of legislation then pending on redefining certain activities which might be encompassed within legislative mandates, such as the Smith Act.

the purpose of worming their way in, to further the Communist objectives. ①

I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

Petitioner identified in a photograph himself, his wife, Aubrey W. Williams, and James A. Dombrowski, the executive secretary of the Southern Conference Educational Fund and said that the pictures were apparently taken when the board of the Fund met in the Red Cross Building on December 15, 1957 (U.S. Ex. 10, p. 2677). He refused on the same grounds as he had earlier stated to answer the questions: "Who solicited the quarters to be made available to the Southern Conference Educational Fund" (count two) and "Are you connected with the Emergency Civil Liberties Committee?" (count three)* (*id.* at 2677-

* The Staff Director stated at petitioner's trial the purpose of these questions (R. 32-33):

That question tied in with the preceding questions in the course of the hearings, which we were attempting to determine whether or not certain quarters had been solicited by a person who was a communist in order to develop factual information on technique which is a pattern of communist operation of soliciting noncommunist facilities for the purpose of disguising the true identity of the promoters of a

2678). Petitioner stated that he and his counsel understood that, as to each of his refusals to answer, the Chairman was ordering him to answer and "an appropriate explanation of the pertinency" has been given (*id.* at 2678).

Petitioner was asked whether his "association with Harvey O'Connor, an identified Communist, in Rhode Island [was] in furtherance of the work of the Emergency Civil Liberties Committee?" (U.S. Ex. 10, p. 2678). Petitioner said that he was there on vacation. He refused, however, to answer, on the same grounds:

group and, that again, had the information been forthcoming it would have been helpful to the committee in the appraisal not only of existing legislation, then existing legislation and its administration and operation, but in assisting the committee in appraisal of proposals then pending before the committee legislatively.

The information which was sought to be obtained there was any connection which this particular witness who had been identified as a communist may have had with an organization which itself had been found by the Senate Internal Security Subcommittee to be a communist front, more particularly, we were concerned with developing this information because it was suggested to the committee and was our information that this witness had been in recent conference with the head of the Emergency Civil Liberties Committee who himself was a communist, identified as a communist. This information, had it been forthcoming, would have added to the fund of knowledge of the committee itself, our committee, the committee on Un-American Activities in appraising the function and activity of the Emergency Civil Liberties Committee and determining whether or not our committee, had it been forthcoming, plus other information which we then had, might be sufficient quantity of information for the committee to itself cite the Emergency Civil Liberties Committee.

"Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?" (count four)* (*ibid.*)

Petitioner refused to answer on the ground of the vagueness of the question whether he had, as a field organizer of the Southern Conference Educational Fund, promoted political pressure on Congress regarding security legislation (U.S. Ex. 10, p. 2678). The subcommittee then showed petitioner a letter addressed to "Dear Friend," asking the recipient to write his congressman, and to urge others to write, opposing particular legislation (*id.* at 2679). Petitioner admitted that he and his wife had signed the

* The Staff Director testified at petitioner's trial that the purpose of this question was (R. 33-34):

As I have already indicated, our committee, the Un-American Activities Committee, had a deep concern over the activities of the Emergency Civil Liberties Committee, its functions across the country. We were trying to elicit here information as to what may have developed between two persons who had been identified as communists, respecting plans and strategies of an organization which itself has been engaging in dissemination of communist propaganda and which according to the findings of the Senate Internal Security Subcommittee is itself a communist front. All this information, had it been forthcoming, would have added appreciably to the fund of knowledge of the committee in its appraisal of legislative proposals then pending and in the administration of the Internal Security Act which has provisions for citation of organizations as communist fronts, and I am not presently aware of any outstanding citation by the subversive activity control board of the Emergency Civil Liberties Committee.

letter, but he refused to answer, on the same grounds as previously, the question: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" (count five)¹⁰ (*ibid.*).

The Staff Director of the Committee explained to petitioner that Eugene Feldman, who has been identified as a Communist, was the editor of the Southern Newsletter, and that this publication originates in Chicago and is shipped to Louisville from whence it is distributed throughout the South (U.S. Ex. 10, p. 2679). He then said to petitioner: "I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?" (count 6)¹¹ (*ibid.*). Peti-

¹⁰ The Staff Director explained the purpose of this question at petitioner's trial (R. 34): -

I have previously on this record alluded to a letter which was sent by the defendant in this proceeding and another person to a number of persons respecting legislative activity [see *supra*, pp. 9-10]. It was of deep concern to this committee to determine not whether or not the letters were sent, because everyone has a right to send letters, not to determine whether or not petitions were being sent to the Congress, but to determine what were the techniques involved by the Communist Party in procuring signatures and in disseminating the Communist Party line at the behest of the conspiratorial operation in the country. Again it would have been, in my judgment, valuable information for the committee to obtain, again for the purpose of appraising communist party techniques in its operation in the United States.

¹¹ The Staff Director testified at petitioner's trial as to the purpose of this question (R. 34-35):

As I have previously indicated on this record, it was the information of the committee that this particular witness had been a writer of articles or columns or something of the kind that appeared in the Southern Newsletter. It was

tioner refused to answer on the same grounds (*id.* at 2679-2680).

The Staff Director told petitioner that the Southern Conference Educational Fund is the successor organization to the Southern Conference for Human Welfare which had been cited as a Communist front and was operating under the same leadership; that he (petitioner) was connected with the Emergency Civil Liberties Committee which also has been so cited; and that a witness had sworn that petitioner was a member of the Communist Party (U.S. Ex. 10, p. 2680-2681).

The next witness after Braden was Frank Wilkinson, who was also convicted of contempt and is the petitioner in No. 37, this Term. When Wilkinson refused to answer whether he was a member of the Communist Party, the Staff Director of the Committee explained the purpose of the hearings to the witness. In his remarks, the Staff Director said (U.S. Ex. 10, p. 2682):

“[I]t is the information of this committee that you now are a hard-core member of the Com-

also the information of the committee, and we were not too certain about what the facts were, that the Southern Newsletter was being channeled from Chicago to Louisville, Kentucky, where the defendant lived, on out through Southland, that there was a lockbox or a post office box, I should say, in Louisville. We were trying to develop from this witness information as to his connections with the Southern Newsletter, all for the purpose of developing factual material respecting a publication which we knew was Communist controlled and which was disseminating Communist propaganda for the purpose of enabling the committee to have additional fund of factual material which it could appraise pending proposals, which it could appraise administration and operation of the then existing internal security legislation on the statute books.

munist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee * * *

Later, Wilkinson refused to answer whether a document shown to him by the subcommittee was a true reproduction of the registration form he filled out at the Atlanta Biltmore Hotel. The form listed Wilkinson and James A. Dombrowski,^{11a} and Wilkinson's business firm as the Emergency Civil Liberties Committee, New York (*id.* at 2685). Wilkinson likewise refused to answer whether he was "the principal driving force, the leader," of the Emergency Civil Liberties Committee (*id.* at 2686).

SUMMARY OF ARGUMENT

I

The Committee's resolution authorizing the hearings, the testimony of the Staff Director of the Committee at petitioner's trial, the opening statement of the Chairman of the Committee at the hearings, the questioning and testimony of other witnesses at the hearings, the subcommittee's explanation of the questions asked petitioner when he refused to answer, and the closing statement of the subcommittee Chairman at the hearings show that the subcommittee was investigating two subjects when it questioned petitioner.

^{11a} The Staff Director testified at petitioner's trial that Dombrowski was the chief officer of the Southern Conference Educational Fund (R. 31).

The first was Communist infiltration and colonization activities in the South and the second was the Party's propaganda activities, principally in the South. As we show in our brief in *Wilkinson v. United States*, No. 37, this Term, pp. 39-40 (Wilkinson testified immediately before the petitioner here in these same hearings), these two subjects of inquiry came clearly within Rule XI of the standing rules of the House (the Committee's authorizing resolution) and its gloss of legislative history which have "clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country." *Barenblatt v. United States*, 360 U.S. 109, 118.

Petitioner, in claiming that Rule XI is fatally vague, attempts unsuccessfully to distinguish *Barenblatt*. *Barenblatt*, like this case, involved a criminal prosecution. Communist infiltration and propaganda activities, which were the subjects under investigation here, are just as fully within the pervasive authority of the Committee as Communist activity in the field of education, the subject being investigated in *Barenblatt*. And the question asked petitioner as to whether he was a Communist Party member at a particular time—a question which is itself sufficient to sustain the conviction—is virtually identical with one of the questions upheld by this Court in *Barenblatt*.

II

The six questions which petitioner refused to answer were each pertinent to the subjects under inquiry, as a

matter of law, and this pertinency was made clear to petitioner.

A. Petitioner admitted at the beginning of his trial that actual pertinency was an issue of law for the court. Only after the jury had been excluded from hearing evidence on this issue, the court had ruled against petitioner, and the charge to the jury was completed, did petitioner claim that the issue was properly one for the jury. His claim at this time was too late: first, the jury did not have the necessary evidence before it, and, second, he cannot fairly allow the trial court, with his tacit agreement, to rule on the issue and then object only when the court's decision is unfavorable.

In any event, this Court has held in *Sinclair v. United States*, 279 U.S. 263, 299, that the actual pertinency of the question to the subject under investigation, like relevancy and materiality, present questions of law, properly to be decided by the trial court. Petitioner, however, relying on a single ambiguous court of appeals' decision, claims that actual pertinency is an issue for the jury when evidence outside the committee hearings is relied on. Even if this proposition is consistent with *Sinclair*, the jury here found as a fact (on the basis of the Committee hearings) that petitioner was apprised of the pertinency of the questions; this necessarily included a finding that the questions were in fact pertinent.

B. All six questions were clearly pertinent to the subjects under inquiry. The Committee had information that the petitioner was a Communist Party member active in Communist propaganda and other Party

work in the South; that he was connected with the Southern Conference Educational Fund, the Emergency Civil Liberties Committee, and the Southern Newsletter; and that these three organizations were Communist controlled or at least heavily infiltrated and were engaged in Communist propaganda and other work. The six questions either would have provided, in themselves, further information on Communist infiltration or propaganda activities, or were introductory questions which would show whether petitioner could provide further information on these subjects.

C. The jury found that petitioner was apprised of the pertinency of the six questions to the subjects under inquiry. This finding is fully supported by the record.

1. The subjects under inquiry were described to petitioner by the means prescribed in *Watkins v. United States*, 354 U.S. 178, 211-214: the resolution authorizing the subcommittee hearings, the opening statement of the Chairman, the questioning and testimony of other witnesses; and the response of the subcommittee when petitioner refused to answer. In fact, the latter source alone clearly informed petitioner that the subjects under inquiry were Communist infiltration and propaganda activity, especially in the South. And petitioner himself indicated that he understood that these were the subjects under inquiry.

2. As to the connective reasoning between the subjects of Communist infiltration and propaganda activity and the particular questions asked, petitioner indi-

cated that he understood the pertinency of the questions which had been explained to him, even though he disagreed that the subcommittee had any constitutional authority to investigate these subjects. In addition, the subcommittee's statements to petitioner clearly showed to any reasonable person the relationship of the questions and the subjects under inquiry. This is particularly true of the question as to petitioner's membership in the Communist Party. In *Barenblatt*, this Court held, with regard to a similar question as to Party membership, that "pertinency * * * was clear beyond doubt" (360 U.S. at 125), without any further explanation, to an investigation of Communist activity.

III

A. Petitioner claims that he relied on *Watkins v. United States*, *supra*, and that therefore he could not be convicted of "wilful" refusals to answer. But in *Sinclair v. United States*, *supra*, this Court held that a mistaken view of the law is not enough to reverse a conviction under the predecessor statute to 2 U.S.C. 192. This holding was reaffirmed in *Watkins* itself, and both this Court and the lower courts have uniformly held that 2 U.S.C. 192 requires proof only of a deliberate, intentional, refusal to answer.

B. The trial court charged the jury that it must find that petitioner intentionally refused to answer. Under this charge, to which petitioner did not except, the jury found that petitioner did so refuse to answer and this finding is fully supported by the record.

IV

The subcommittee's investigation did not violate the First Amendment.

A. As we show in our brief in *Wilkinson*, No. 37, pp. 51-52, the two subjects under inquiry when petitioner testified—Communist infiltration and propaganda activity in the South—are under *Barenblatt*; 360 U.S. at 127-132, valid legislative purposes, clearly not prohibited by the First Amendment.

Petitioner's attempts to distinguish *Barenblatt* are unavailing. First, that case did not determine that Congress can only investigate the Communist Party itself; rather, it upheld an investigation of Communist activity in education. Second, while *Barenblatt* directly considered only questions relating to the witness' Party membership, the whole rationale of the decision supports the power of a congressional committee, having information of Communist activity in educational institutions, to inquire further into the nature of that activity. In any event, one of the counts here—which, as we have said, is in itself enough to sustain the conviction—concerned petitioner's Party membership. Third, *Barenblatt* does not uphold investigation only of Communist activity shown to be directly related to overthrow of the Government. Instead, the Court found a "close nexus between the Communist Party and violent overthrow of government" (360 U.S. at 128), making clear that the nature of the Party itself supplied the connection between investigation of Communist activities and forcible overthrow. And the Court further emphasized that "[t]he strict requirements of a prosecution

under the Smith Act * * * are not the measure of the permissible scope of a congressional investigation into 'overthrow,' for of necessity the investigatory process must proceed step by step" (*id.* at 130).

Petitioner alleges a whole series of non-legislative purposes for the inquiry. But the Committee was at all times inquiring into Communist activities—a proper legislative objective. Both Communist criticism of the Committee and Communist petitions to Congress constitute one form of the Party's propaganda activity. The record shows that the questions as to the Emergency Civil Liberties Committee were intended not only to determine whether it should be cited as a Communist front but also to obtain information on Communist propaganda activity. And the subcommittee made clear that it was investigating Communist activity, not integration or civil rights.

B. In *Barenblatt*, the Court held that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134). In the Government's Brief in *Wilkinson*, No. 37, pp. 55-60, we point out that the governmental interests at stake are at least as strong as those in *Barenblatt*. Since the same hearings and two of three subjects under inquiry are involved in this case and in *Wilkinson*, the governmental interest is virtually identical in both cases.

Petitioner claims that the Committee had no information that petitioner was a Communist Party member or that any of the organizations as to which he

was questioned had any connection with the Communist Party. In fact, however, the record of the hearings and of petitioner's trial demonstrate quite the contrary; the Committee had a large amount of information, much of it based on witnesses disclosed to petitioner and on prior investigations by another congressional committee. While this evidence would not constitute judicial proof, *Barenblatt* required only that the subcommittee have "probable cause for belief that [the witness] possessed information which might be helpful to the Subcommittee" (360 U.S. at 134). The record here shows that this standard was fully met.

ARGUMENT

Petitioner here was the witness immediately preceding the petitioner in *Wilkinson v. United States*, No. 37, this Term, at hearings of a subcommittee of the House Committee on Un-American Activities. The principal issues raised by petitioner in the instant case are virtually identical with those involved in *Wilkinson* regarding the authority of the Committee, the pertinency of the questions asked, and the rights of witnesses under the First Amendment. As we state in our brief in *Wilkinson*, these issues are fully answered and controlled by this Court's decision in *Barenblatt v. United States*, 360 U.S. 109. Petitioner's only two other contentions—those relating to whether the issue of pertinency should be decided by a jury and whether petitioner's refusal to answer was wilful—are likewise controlled by a decision of this Court, *Sinclair v. United States*, 279 U.S. 263. We discuss each of petitioner's claims in the context of this particular record.

THE COMMITTEE WAS AUTHORIZED BY CONGRESS TO
SUBPOENA PETITIONER.

We demonstrate in our brief in *Wilkinson*, No. 37, pp. 34-39, that the petitioner there was subpoenaed by the House Committee on Un-American Activities to testify at the hearings in Atlanta in July 1958 relevant to the subjects of Communist colonization and infiltration, the Party's propaganda activities principally in the South, and the organization and reconstitution of the Communist Party.¹² The subject of the Party's organization and reconstitution, however, became a part of the hearings only when it was stated to Wilkinson after he refused to answer the question as to his membership in the Communist Party. Therefore, it was not a subject of inquiry when the other witnesses at the hearing testified. The other two subjects, which were the principal subjects of the entire hearings—Communist colonization and infiltration of other groups and organizations, and Communist propaganda activities in the South—are shown in our brief in *Wilkinson*, pp. 34-37, by the resolution of the Committee authorizing the hearings, the opening statement of the Chairman of the Committee at the hearings, the questioning and testimony of witnesses other than Wilkinson or petitioner here, the explanation of the question when Wilkinson refused

¹² We also show that another subject under investigation at the hearings as a whole was foreign Communist propaganda in the South. See our brief in *Wilkinson*, p. 37, note 11. But neither Wilkinson nor Braden ~~was~~ subpoenaed or questioned in relation to this subject.

to answer, and the closing statement of the Chairman of the subcommittee. This evidence is confirmed by the particular evidence shown in this case relating to the present petitioner.

The Staff Director of the Committee testified at petitioner's trial that the hearings in Atlanta were held to develop information relating to Communist infiltration, propaganda, operations, and techniques in the South (see *supra*, pp. 4-5). He said that petitioner was subpoenaed to appear before the subcommittee because of information that he was a member of the Communist Party; that he was a field representative of the Southern Conference Educational Fund, which was the successor to a Communist-front organization, and which itself engaged in Communist activity; that in this capacity he was travelling through the South setting up meetings, disseminating Communist propaganda, and doing other Communist work; that he was a writer and perhaps distributor for the Southern Newsletter, a Communist-controlled publication; and that he was active in circulating, in the South, Communist-organized petitions to Congress without describing their sponsorship (*supra*, pp. 8-11). The Staff Director further testified that the questions asked petitioner, which he refused to answer, were intended to discover information about Communist methods of infiltrating other organizations, of using non-Communist facilities to disguise the identity of the promoters of the group, and of spreading Party propaganda through petitions to Congress; about the operations of the Emergency Civil Rights Committee, which was believed to be involved in Communist propaganda activities; and about the Southern News-

letter, which was known to be Communist-controlled and spreading Communist propaganda (see *supra*, pp. 18 at note 7, 19-20 at note 8, ~~21~~ at note 9, ~~22~~ at note 10, 22-23 at note 11).

When petitioner appeared before the subcommittee and first objected to the pertinency of a question, he was told by the Staff Director that the Committee had information that he was a member of the Communist Party and had been active in Communist propaganda and other activity, principally in the South (see *supra*, p. 12). Subsequently, Representative Jackson stated that the subcommittee was investigating propaganda activities, which in context obviously meant Communist propaganda activities (see *supra*, pp. 15-16). The Staff Director told petitioner that a previous witness, Armando Penha, had testified concerning Communist infiltration of non-Communist organizations to further Communist objectives (see *supra*, p. 18). And, as we shall show (*infra*, pp. 42-45), all the questions asked petitioner—both those he answered and those he refused to answer—relate to Communist infiltration and propaganda activities, particularly in the South.

Thus, the record of petitioner's trial and of the hearings demonstrate that these were the two subjects under inquiry as to which petitioner was subpoenaed and questioned. And, as our brief in *Wilkinson* shows (pp. 39-40), these two subjects came clearly within Rule XI of the standing rules of the House (the Committee's authorizing resolution) and its gloss of legislative history which have "clothed the Un-American Activities Committee with pervasive authority to in-

investigate Communist activities in this country." *Barenblatt v. United States*, *supra*, 360 U.S. at 118.

Petitioner, in claiming (Pet. Br. 40-42) that "[a]s a standard of criminal conduct Rule XI is fatally vague in its present application" (Pet. Br. 40), attempts to distinguish *Barenblatt* by stating that "[e]ven if Rule XI may be thus understood to authorize an investigation into Communist Party membership, * * * it cannot possibly be said to authorize, with the clarity essential to a criminal statute, an investigation into political and journalistic activities which were the focus here" (Pet. Br. 41-42). But this distinction is clearly without substance and amounts to an attempt to have this Court overrule *Barenblatt*. First, *Barenblatt*, like the instant case, involved a criminal prosecution, so that the standard of definiteness applied in criminal cases was applied there. Therefore, here, as in *Barenblatt*, the Court should look not only to Rule XI but to its gloss of legislative history in determining the authority of the Committee.¹³

¹³ The reason why the use of materials other than the statute is permissible is that Rule XI is a resolution delegating authority and is not a criminal statute. The criminal statute petitioner was tried under was 2 U.S.C. 192, *supra*, pp. 2-3, which is perfectly clear.

While the authority of the congressional committee is one of the elements of the crime under 2 U.S.C. 192, it is not necessary that a potential lawbreaker be able to measure with complete clarity the particular fact situation against the criminal statute to ascertain whether his act would be criminal. Thus, a criminal statute which allows self-defense need not spell out the details of permissible self-defense, and certainly not to the extent that no one could mistake the statute's applica-

Second, the record overwhelmingly proves that the subcommittee here was not investigating mere political and journalistic activities, but rather Communist infiltration and propaganda activities (see *supra*, pp. 32-34, and our brief in *Wilkinson*, pp. 34-39). Such Communist activities clearly come within the Court's statement of the "pervasive authority" of the Committee, as given in *Barenblatt*.

Third, the Committee in *Barenblatt* was not investigating mere Party membership, but rather Communist activity in the field of education (see 360 U.S. at 121, 124, 129). The questions asked *Barenblatt* concerning his Party membership were merely the introductory questions in that inquiry. Communist infiltration and propaganda activity in the South—the subjects of the inquiry in the present case—are surely just as within the "pervasive authority" of the Committee as Communist activity in education.

Fourth, one of the questions asked petitioner was whether he was a member of the Communist Party at the time he signed a letter (count five), which he admitted signing (see *supra*, p. 21).²² Thus, even if *Barenblatt* held that Rule XI and its gloss of legislative history only authorized the Committee to in-

tion in every fact situation. Similarly here, it is enough that 2 U.S.C. 192 requires that the question be within the authority of the committee. Just as a potential lawbreaker must decide whether certain acts constitute self-defense, so a witness must decide whether a particular question is authorized. The only difference between the two situations is that the authority of the committee is governed by a non-criminal resolution, while the scope of self-defense is ordinarily not defined by any legislation at all. See also *infra*, p. 37.

investigate Party membership, this question as to Party membership was authorized. Indeed, this question is almost identical to the question upheld in *Barenblatt* as to whether Barenblatt was a member of a particular Communist Party unit at the time he attended the University of Michigan four years before (360 U.S. at 114, 126 at note 25). Since petitioner was given concurrent sentences on all six counts, his conviction on this one count is sufficient to sustain the conviction. *E.g.*, *Barenblatt*, 360 U.S. at 115; *Lawn v. United States*, 355 U.S. 339, 359; *Roviaro v. United States*, 353 U.S. 53, 59 at note 6.

*Petitioner also argues (Pet. Br. 42) that he was not put on notice during the hearings as to the authority of the Committee. First, we do not believe that such notice is required. Petitioner cites no authority supporting his contention, and *Watkins v. United States*, 354 U.S. 178, and *Barenblatt* hold only that the witness must be apprised of the pertinency of the question to the subject under inquiry, upon proper objection. They do not indicate that a similar rule extends to the authority of the Committee even though the question whether the Committee in fact had authority to conduct the respective investigations was discussed in both decisions. A witness, particularly one who is represented by counsel, does not need to be apprised of the authority of the Committee, since both the authorizing resolution and its legislative gloss—which are the two sources of authority relied on in *Barenblatt*, 360 U.S. at 117-122—are matters of public record. See also *supra*, pp. 35-36 at note 13.

In any event, the whole tenor of the subcommittee's questioning made clear that it claimed authority to investigate Communist activities generally. Moreover, this claim was brought home to petitioner by several specific statements. When petitioner first refused to answer a question, the Staff Director of the Committee indicated that the Committee had an interest in legislation concerning a broad range of Communist activity, including the field of propaganda, and then stated that "the Committee on Un-American Activities has a mandate from the Congress * * * to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes" (see *supra*, pp. 12-13). Subsequently, when petitioner claimed that the mandate of the Committee was so vague "that nobody knows what you are supposed to be investigating," the Staff Director answered, "communism and Communists" (see *supra*, p. 15)—a description which is substantially the same as the "pervasive authority to investigate Communist activities" stated in *Barenblatt* (360 U.S. at 118). Later, Representative Jackson told petitioner that the mandate of the Committee tells it "to investigate the extent and scope of propaganda activities within the United States" (see *supra*, pp. 15-16), which in context clearly meant Communist propaganda activities.

THE QUESTIONS WERE PERTINENT TO THE SUBJECTS UNDER INQUIRY, AS A MATTER OF LAW, AND THIS PERTINENCY WAS MADE CLEAR TO PETITIONER

A. ACTUAL PERTINENCY IS A QUESTION OF LAW TO BE DECIDED BY THE COURT

Petitioner contends (Pet. Br. 32) that the pertinency of the questions to the subjects under inquiry was for the jury to decide and that therefore the trial court erred in holding (R. 70) that the six questions were pertinent as a matter of law.¹⁴

1. Significantly, however, petitioner's counsel (who is also one of his counsel in this Court) admitted in his opening statement to the jury (R. 16):

As the counsel for the government has properly stated, the question of whether or not those questions were pertinent to the subject matter under inquiry has been ruled to be a question of law for the Court. But whether or not the defendant Carl Braden at the time he refused to answer those questions knew that they were pertinent to the subject matter under inquiry is a question of fact which will be submitted by the Court to you gentlemen.

Again in his closing argument to the jury, counsel tacitly conceded that actual pertinency was a matter of law for the court (R. 59). Only after the concluding arguments and the charge of the court did peti-

¹⁴ The issue whether petitioner was sufficiently apprised by the subcommittee of this pertinency was of course a question of fact which the trial court properly submitted to the jury (see *infra*, pp. 43-54).

tioner's counsel claim for the first time that the jury should decide the question of actual pertinency (R. 75).

We submit that petitioner is precluded on two grounds from raising this objection at such a late time. First, the case was tried on the basis that actual pertinency was an issue to be decided by the trial judge. Thus, when the government presented evidence concerning the information which the subcommittee sought, from the hearings as a whole and from petitioner in particular, the jury was excluded (R. 23-38). Petitioner made no objection to exclusion of the jury (R. 23) and in fact asked that cross-examination concerning actual pertinency be conducted outside the presence of the jury (R. 35). Certainly, after much of the evidence concerning actual pertinency had not been presented to the jury (with petitioner's consent),¹⁵ petitioner cannot claim the right to have the jury determine the issue.

Second, petitioner cannot fairly allow the trial court to rule on the issue of pertinency without objection and then when the ruling is unfavorable claim that the issue is properly one for the jury. By submitting the issue to the trial court, petitioner waived any right he had to trial by jury on this issue.

2. Petitioner is also wrong on the merits of his argument. Actual pertinency has been held by this

¹⁵ The jury did have before it that portion of the evidence concerning actual pertinency which also related to whether petitioner was apprised of pertinency by the subcommittee, since this issue was to be, and was, submitted to the jury.

Court to be an issue of law properly decided by the trial court. The Court held in *Sinclair v. United States*, 279 U.S. 263, 299, that pertinency, like relevancy and materiality, are questions of law:

The reasons for holding relevancy and materiality to be questions of law * * * apply with equal force to the determination of pertinency arising under § 102. The matter for determination in this case was whether the facts called for by the question were so related to the subjects covered by the Senate's resolutions that such facts reasonably could be said to be "pertinent to the question under inquiry." It would be incongruous and contrary to well-established principles to leave the determination of such a matter to a jury.

Accord, *Morford v. United States*, 176 F. 2d 54, 57 (C.A. D.C.), reversed on other grounds, 339 U.S. 258; *Bowers v. United States*, 202 F. 2d 447, 453 (C.A. D.C.); *Keeney v. United States*, 218 F. 2d 843, 845, 846-849 (C.A. D.C.); *Russell v. United States*, 280 F. 2d 688, 689 (C.A. D.C.), pending on petition for a writ of certiorari, No. 239, this Term; *Liveright v. United States*, 280 F. 2d 708, 714 (C.A. D.C.), pending on petition for a writ of certiorari, No. 328, this Term.

While the holding in *United States v. Orman*, 207 F. 2d 148, 155-156 (C.A. 3), on which petitioner relies (Pet. Br. 32), is not altogether clear, it seems that the trial court left it to the jury to find the facts and instructed them that, if they found certain facts, the questions were pertinent as a matter of law. The court stated that where "evidence *aliunde* is intro-

duced to prove pertinency * * * it is proper for [the court] to rule [as to pertinency] and then to submit the question and the evidence to the jury under appropriate instructions" (*id.* at 156). The phrase "it is proper" suggests that this procedure is not error,¹⁶ but does not necessarily mean that the trial court was required to submit the issue to the jury. Certainly, the court of appeals did not reject the clear holding of this Court in the *Sinclair* case.

In any event, while evidence *aliunde* was admitted in this case as to actual pertinency (the testimony of the Staff Director at petitioner's trial (see *supra*, pp. 4-5, 10-11, 17-23)), the jury found on the basis of the evidence at the hearings themselves that petitioner was apprised of the pertinency of the questions. As we show below (see *infra*, pp. 45-54), this finding is fully supported by the evidence. Thus, even if *Orman* stands for the proposition petitioner claims—and if *Sinclair* is not inconsistent with that proposition—pertinency was found by the jury in this case even without considering other evidence which was introduced at the trial and which would also have supported its finding.

B. THE QUESTIONS WERE PERTINENT TO THE SUBJECTS UNDER INQUIRY

We have shown that the two subjects under investigation when petitioner was questioned were Commu-

¹⁶ The *Keeney* case, *supra*, however, held that the trial court "erred in permitting the jury to hear testimony about the [defendant's] activities which bore only on pertinency and tended strongly to prejudice the jury" (218 F. 2d at 845; see *id.* at 846, 849).

nist infiltration and Communist propaganda activities in the South (see *supra*, pp. 32-34). All six questions which petitioner refused to answer, and as to which he was convicted, were clearly pertinent to these subjects under inquiry.

The question which was the subject of count one concerned whether petitioner attended a meeting in Atlanta in December 1957 (see *supra*, p. 17).⁶ The Committee had information that petitioner was a member of the Communist Party; that in this capacity he had travelled throughout the South as a field representative of the Southern Conference Educational Fund, which the Committee believed to be Communist-controlled; that his activity was believed to include setting up meetings for the dissemination of Communist propaganda; and that a particular meeting in Atlanta in 1957 was one of his Communist activities intended to infiltrate other organizations on behalf of the Party (see *supra*, pp. 8-11, 12). The Staff Director of the Committee testified at petitioner's trial that the question was intended to secure information as to Communist techniques in penetrating other organizations (see *supra*, pp. ~~12~~-18 at note 7).

The question which was the subject of count two concerned the person who had solicited the quarters for a particular meeting of the Southern Conference Educational Fund (see *supra*, p. 19). As already stated, the Committee had information that the Fund was a Communist-controlled organization and that such meetings were used to disseminate Communist propaganda and infiltrate other organizations. The Staff director testified at the trial that this question

was intended to gain information about a Communist method of securing non-Communist facilities in order to disguise the identity of the promoters of the organization (see *supra*, p. 19 at note 8).

Counts three and four related to questions whether petitioner was connected with the Emergency Civil Liberties Committee and whether petitioner and Harvey O'Connor had discussed, during petitioner's recent visit to Rhode Island to see O'Connor, the plans and strategy of that Committee (see *supra*, pp. 19-20). The Committee had information that the Emergency Civil Liberties Committee was engaged in disseminating Communist propaganda, that its principal officer, Harvey O'Connor, was a Communist Party member, and that the petitioner had recently visited him (see *supra*, pp. 9-10, 14, 20 at note 8; 21 at note 9). These questions were asked in order to secure further evidence on the function and activities of the Emergency Civil Liberties Committee, particularly whether it was a Communist front (see *supra*, pp. 19-20 at note 8, 20-21 at note 9).

Count five involved a question whether petitioner was a member of the Communist Party when he signed a letter (which he admitted signing) asking its recipients to write, and to urge others to write, to Congress opposing "security" legislation (see *supra*, pp. 20-21). The Committee had information that Communists were circulating petitions in the South concerning legislative activity and that petitioner himself had engaged in this activity (see *supra*, pp. 9-10). Since petitioner was believed to be a Communist Party member, this question was asked to find further infor-

mation on Communist methods of disseminating propaganda in this way, and particularly as to the solicitation of signatures without disclosing the Communist auspices of the petition (see *supra*, p. ~~22~~-22 at note 10).

Count six related to the question whether petitioner was connected with the Southern Newsletter (see *supra*, p. 22). The Committee had information that this publication was Communist-controlled, that its principal officer was a Communist, that it was disseminating Communist propaganda, and that petitioner was a contributor (see *supra*, pp. 9, 10-11, 22-23 at note 11). The Staff Director testified that the question was intended to secure further information on the publication (see *supra*, pp. 22-23 at note 11).

In sum, all six questions would either have provided in themselves further information on Communist infiltration or propaganda activities, or were introductory questions which would show whether petitioner could provide information on these subjects. The trial court, therefore, correctly held that the questions petitioner refused to answer were pertinent to the subjects under inquiry (R. 70).

C. PETITIONER WAS FULLY APPRISED OF THE PERTINENCY OF THE QUESTIONS

This Court held in *Watkins v. United States*, 354 U.S. 178, 214-215, that "[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful,

the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it." This holding was reaffirmed and applied in *Barenblatt*, 360 U.S. at 123-125. We submit that the subcommittee here complied with the standards laid down in *Watkins* and that the jury's finding, based on proper instructions," that petitioner was apprised of the pertinency of the question is fully supported by the evidence.

¹⁷ The trial court's instruction was (R. 72-73):

The Court charges you that to be pertinent to a question under inquiry within the meaning of the law and the charges in the indictment, the questions asked must have been known by the defendant at the time of the committee's hearing to have a reasonable relation to the subject allegedly under inquiry as set forth in the bill of particulars.

Now, in this case the government contends that the subject matter under inquiry was the extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South; Communist Party propaganda activity in the South, and the entry and dissemination within the United States of foreign Communist Party propaganda. If you find beyond a reasonable doubt that the subject matter under inquiry by the subcommittee at the time the defendant appeared before it was as the government contends and that the questions that the defendant allegedly refused to answer were either related to that subject matter with undisputed clarity from the wording of the particular questions, or from the course of the entire questioning of this defendant, or both, or if you find that the subcommittee made an explanation reasonably capable of describing to the ordinary person in the defendant's situation what the subject matter under inquiry was and the way the particular question related to it, then this final aspect of the criminal intent involved in this charge would have been found as to these refusals to answer these questions.

1: In *Watkins*, 354 U.S. at 208-209, the Court held that "[i]t is obvious that a person compelled to make this choice [whether to answer a question] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. * * * The 'vice of vagueness' must be avoided here as in all other crimes. There are several sources that can outline the 'question under inquiry' in such a way that the rules against vagueness are satisfied." The Court then made clear that these sources include the resolution authorizing the subcommittee hearings, the opening statement of the Chairman at the hearings, the questioning and testimony of witnesses at the hearings, and the response of the subcommittee when the witness refused to answer the questions on the ground of lack of pertinency (*id.* at 211-214). In *Barenblatt*, 360 U.S. at 124-125, the latter three factors were relied on to show that the witness was apprised of the subject under investigation.

The subjects under inquiry were conveyed to petitioner here by all the methods suggested in *Watkins*—by the resolution authorizing the subcommittee's investigation, which was introduced into the hearing record and which was available to petitioner, by the statement of the Chairman of the Committee made at the opening of the hearings, and by the prior questioning and testimony of other witnesses at the hearings¹⁸ (see the Government's Brief in *Wilkinson*, No.

¹⁸ One of petitioner's co-counsel at the hearings was the counsel for two witnesses preceding petitioner, including the second witness on the opening day of the hearings (see U.S. Ex. 10, pp. 2667, 2629, 2663).

37, this Term, pp. 4, 6-8, 8-12). And independently of these other methods, the subject under inquiry was explained to petitioner when he himself appeared before the subcommittee.¹⁹

When petitioner first refused to answer a question on the ground of pertinency,²⁰ the Staff Director of the Committee explained to him that the Committee had information that he was a member of the Communist Party and was participating in Communist propaganda and other activities principally in the South (see *supra*, p. 12). The Staff Director further stated that the Committee was considering bills relating to the registration of Communists, the dissemination of Communist propaganda, and other security matters (see *supra*, pp. 12-13). And then he said to petitioner that the subcommittee was holding hearings in Atlanta "for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled," in considering these and other bills and existing statutes (see *supra*, p. 13).

¹⁹ The only additional materials which we have cited to show the two subjects under inquiry at the hearings (*supra*, pp. 32-34), were testimony of the Staff Director of the Committee at petitioner's trial, the testimony of witnesses who testified after petitioner at the hearings, and the closing statement of the subcommittee Chairman. These materials, however, are merely cumulative evidence of the subjects under inquiry which were already clearly conveyed to petitioner when he testified at the hearings.

²⁰ The question concerned where he had departed from to go to Rhode Island to visit Harvey O'Connor (see *supra*, p. 12). This question was not involved in petitioner's indictment or conviction.

Petitioner was told that he was being questioned to secure information for these same purposes (see *supra*, p. 14). Petitioner answered that "my beliefs and my associations are none of the business of this committee" because of the First Amendment (U.S. Ex. 10, p. 2670). He then said "I stand on my previous position under the first amendment, that such a question has no pertinency to any legislative purpose and it violates my belief" (*ibid.*). Thus, when petitioner continued to object that "the question has no possible pertinency to any legislation" (*ibid.*; *supra*, pp. 16-17), he apparently meant that the questions were not pertinent to any legislative purpose or legislation valid under the First Amendment. Petitioner apparently understood—as any reasonable man would—that the subjects under investigation were Communist propaganda and other activities in the South, even though he believed that these subjects violated the First Amendment.²¹ Subsequently, petitioner was thrice told that the Staff Director's explanation of the subject under investigation should be understood to relate to all subsequent questions asked petitioner (see *supra*, pp. 14-15).

When petitioner again objected to the investigation, Representative Jackson stated that the Committee was given authority to investigate "the extent and scope of propaganda activities within the United States"—in context obviously meaning Communist propaganda activities—and "[t]hat is precisely what we are doing. And when you cast doubt, or attempt to cast doubt, on the relevancy of the question, when you are in the

²¹ This contention is discussed below at pp. 59-72.

position you are to influence public opinion through your writings—and I gather through your writings on behalf of the Communist Party—it is very clearly within the purview of this committee to inquire into those activities” (see *supra*, pp. 15–16). After petitioner had refused to answer the question which constituted the basis for count one, the Staff Director added to his previous explanation of the subject matter that Armando Penha had told the subcommittee that Party members are under instructions to infiltrate non-Communist organizations (see *supra*, p. 18). After petitioner refused to answer the question which was the basis of count two, he stated that he and his counsel understood that “an appropriate explanation of the pertinency” had been given as to each of his refusals to answer (see *supra*, p. 20). Thus, he again indicated that he understood the subcommittee’s statement as to the subject under inquiry, but apparently still disagreed that it was a valid subject under the First Amendment.

We submit that the subcommittee’s explanations to petitioner, even considered alone without the other sources allowed by *Watkins*, show that petitioner was clearly informed that the subjects under inquiry were Communist propaganda activity and Communist infiltration of other organizations, especially in the South.²² Indeed, petitioner himself indicated that he

²² Most of the questions asked petitioner and the colloquy between petitioner and the subcommittee related on their face to events in the South, including the Southern Conference Educational Fund, the Southern Newsletter, and the conflict over integration (see U.S. Ex. 10, pp. 2670–2673, 2675, 2677–2681).

understood the subjects under inquiry, as well as the pertinency of the questions.²³

2. As to the "connective reasoning" between the subject of Communist infiltration and propaganda activity in the South and the particular questions asked, petitioner indicated that he understood the pertinency of the questions to the subjects which had been explained to him, even though he disagreed that the subcommittee had the constitutional authority to investigate this subject (see *supra*, p. 49). In addition, petitioner was told when he first refused to answer that the Committee had information that he was a member of the Communist Party who was engaged in propaganda activity principally in the South (see *supra*, pp. 12, 15). He subsequently refused to answer a question, which preceded any of his refusals to answer charged in the indictment, as to what he, as "an identified member of the Communist Party, [had] to do with this letter" which petitioned Congress to stop the Atlanta hearings of the Committee (see *supra*, p. 16). He was told that it was very possible that the letter had been prepared by a Communist (U.S. Ex. 10, pp. 2674-2675). Petitioner then testified that he had travelled all over the South as field organizer for the Southern Conference Educational Fund. When he was then asked whether he

²³ If only one subject was made sufficiently clear to petitioner, several counts are still valid since petitioner was apprised of the pertinency of several questions to each of the two subjects during the hearings (see *infra*, pp. 51-54). As we have stated, if any one count is valid, the conviction must be sustained (see *supra*, p. 37).

had participated in a meeting in December 1957 in Atlanta (count one; see *supra*, pp. 17),⁶ the connection between the question and Communist propaganda activities was clear. The subcommittee was attempting to discover whether the meeting (which the question assumed had occurred) was involved in any way with Communist propaganda activities which petitioner's presence and participation would tend to show.

Before the next question was asked, petitioner was told that Armando Penha had testified that Party members are under orders to infiltrate non-Communist organizations for Communist purposes (see *supra*, p. 18). Petitioner then admitted attending a board meeting of the Southern Conference Educational Fund. When he was asked who had solicited the quarters used for this meeting in the Red Cross Building in Atlanta (count two; see *supra*, p. 19), he could hardly have failed to understand that the subcommittee wished to find out how an organization which had been infiltrated by Communists could obtain such respectable quarters.

The next questions concerned whether petitioner was connected with the Emergency Civil Liberties Committee and whether he and Harvey O'Connor had developed plans of the Emergency Committee when they recently met together (counts three and four; see *supra*, pp. 19-20). Petitioner had previously been told that the Committee believed that Harvey O'Connor, who petitioner stated was the principal officer of the Emergency Committee, was a member of the Com-

munist Party and that the Emergency Committee was a Communist front (see *supra*, p. 14). Petitioner had testified that when he was subpoenaed he was visiting O'Connor (see *supra*, pp. 12-13). Thus, these questions clearly related to Communist infiltration of other organizations.²⁴

Perhaps the most obviously pertinent question to the subject under inquiry was that which constituted the basis for count five: "Were you a member of the Communist Party the instant you affixed your signature to that letter?" (see *supra*, p. 22). This letter, which petitioner had read to the subcommittee, was signed by petitioner and his wife, and asked the recipients to write, and to get others to write, their Congressmen opposing certain "security" legislation (see *supra*, p. 21). Petitioner had previously been told that another letter directly petitioning Congress was likely prepared by a Communist (see *supra*, p. 17). In asking whether petitioner was a Party member, the subcommittee was taking the first step of ascertaining whether this effort to petition Congress was a Communist infiltration and propaganda activity—a possibility which was certainly reasonable since it was signed by a person whom the Committee reasonably believed to be a Party member. With regard to a similar question as to the witness' Communist

²⁴ Petitioner cites (Pet. Br. 30-31) *O'Connor v. United States*, 240 F. 2d 404 (C.A. D.C.), for the proposition that this information concerning Mr. O'Connor is too vague to support a showing of pertinency. In fact, that case held that the question whether the witness was at any time a member of "the Communist conspiracy" was too vague; the court did not consider its pertinency.

Party membership, this Court held in *Barenblatt* that "pertinency * * * was clear beyond doubt" (360 U.S. at 125), without further explanation, to the investigation of Communist activity in education. Similarly, here, the pertinence of petitioner's membership in the Party to the subcommittee's investigation of Communist propaganda activity in the South was clear beyond doubt.

Petitioner was then told that the editor of the Southern Newsletter had been identified as a Communist and that it was distributed from Louisville, Kentucky. The subcommittee asked petitioner whether, since he was from Louisville, he had anything to do with that publication (count six; see *supra*, p. 22). Again, petitioner was clearly apprised that the question related to the Communist propaganda activities in which he was believed to be engaged.

In sum, we believe that the evidence fully justified the finding of the jury that petitioner was apprised of the pertinency of the questions to the subjects under inquiry. *At the least*, the question in count five relating to petitioner's membership in the Communist Party comes squarely within this Court's holding in *Barenblatt*. And as we have stated (*supra*, p. 37), the validity of this one count is in itself sufficient to sustain the conviction.

III

2 U.S.C. 192 REQUIRES PROOF ONLY OF A DELIBERATE REFUSAL TO ANSWER, AND NOT PROOF OF MALICE OR BAD PURPOSE

A. Petitioner contends (Pet. Br. 43-46) that, since he justifiably relied on *Watkins v. United States*,

supra, he could not properly be convicted of a wilful failure to answer. But this Court in *Sinclair v. United States*, 279 U.S. 263, specifically rejected a similar contention made with regard to Section 102 of the Revised Statutes, the predecessor of 2 U.S.C. 192 (279 U.S. at 299):

There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel. The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Unintentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of law is no defense.

As *Barenblatt* repeatedly makes clear, the *Barenblatt* decision is consistent with *Watkins* (see 360 U.S. at 116-117, 122-124, 126-127, 133).²⁵ Thus, petitioner simply failed to construe the statute and the *Watkins* holding properly.

²⁵ Petitioner's reliance (Pet. Br. 46) on *Harris v. Jex*, 55 N.Y. 421, ignores this fact. There the court was considering the effect of an overruling by this Court of an early decision in the legal tender cases. *Hepburn v. Griswold*, 8 Wall. 603, overruled by *Knox v. Lee*, 12 Wall. 457.

As the discussion below shows (pp. 56-59), we do not believe that a witness can justify his refusal to answer on a decision of this Court which is later overruled since good faith is not a defense. But, in any event, such a case is not before the Court.

Petitioner, however, claims (Pet. Br. 44-46) that the decision in *Sinclair* is no longer controlling because subsequently this Court has held that 2 U.S.C. 192 requires proof of a wilful refusal to answer—"wilful" in the sense of malice or bad purpose. *United States v. Murdock*, 290 U.S. 389, 396-397, on which petitioner relies, considered a prosecution for refusing, in violation of the Revenue Act of 1926, to supply the Bureau of Internal Revenue with information, and held that good faith was a defense. The Court distinguished *Sinclair* by stating that R.S. § 102, unlike the Revenue Act of 1926, did not make wilfulness an element of the crime of refusal to answer (290 U.S. at 397): "The applicable statute did not make a bad purpose or evil intent an element of the misdemeanor of refusing to answer, but conditioned guilt or innocence solely upon the relevancy of the question propounded. *Sinclair* was either right or wrong in his refusal to answer, and if wrong he took the risk of becoming liable to the prescribed penalty."

Since *Murdock* and *Sinclair*, this Court has not, contrary to petitioner's contention, read the element of wilfulness—in the sense of bad purpose or evil intent—into the contempt of Congress statute. On the contrary, in *Quinn v. United States*, 349 U.S. 155, 165, the Court stated that 2 U.S.C. 192 requires for criminal intent only "a deliberate, intentional refusal to answer." That same day, *Emspak v. United States*, 349 U.S. 190, 202, held that 2 U.S.C. 192 includes "the element of deliberateness." And *Watkins v. United States*, *supra*, 354 U.S. at 208, explicitly held:

As the Court said in *Sinclair v. United States*, 279 U.S. 263, the witness acts at his peril. He is "... bound rightly to construe the statute." *Id.*, at 299. An erroneous determination on his part, even if made in the utmost good faith, does not exculpate him if the court should later rule that the questions were pertinent to the question under inquiry.

The courts of appeals have held that the element of wilfulness need not be specifically charged in the indictment for failure to answer questions. *United States v. Deutch*, 235 F. 2d 853, 854 (C.A. D.C.), holds, relying on *Quinn*, that the indictment need only charge an intentional and deliberate act, which it does by using the word "refused." Accord, *Sacher v. United States*, 240 F. 2d 46, 53 (C.A. D.C.) vacated on other grounds, 354 U.S. 930; *Barenblatt v. United States*, 240 F. 2d 875, 878 (C.A. D.C.), reversed on other grounds, 354 U.S. 930. On the other hand, *United States v. Lamont*, 18 F.R.D. 27, 32 (S.D. N.Y.), affirmed on other grounds, 236 F. 2d 312 (C.A. 2), held that "wilfulness, or a deliberate, intentional refusal to answer" must be charged and therefore found implicitly that using the word "refused" was not enough. But it is clear that, as to the issue involved here, wilfulness was equated to a deliberate, intentional refusal to answer.

The portion of 2 U.S.C. 192 proscribing failure to produce documents requires that "wilfulness" be pleaded and proved. But, as in *Lamont*, the courts have held that such wilfulness requires only that the act be intentional and deliberate and not that it be done for an evil or bad purpose. See, e.g., *Fields v.*

United States, 164 F. 2d 97, 100 (C. A. D.C.), certiorari denied, 332 U.S. 851; *Barsky v. United States*, 167 F. 2d 241, 251 (C.A. D.C.), certiorari denied, 334 U.S. 843. Thus, the decisions of this and the lower courts uniformly hold that wilfulness under 2 U.S.C. 192 means no more than a deliberate and intentional act.

B. Petitioner was indicted for knowing, wilful, and unlawful refusals to answer six questions (R. 45). The trial court, consistently with the decisions discussed above, charged the jury (R. 69):

[Y]ou are to decide merely whether [petitioner] intentionally refused to answer without regard of any motive that he may have had. Such refusal does not require evil intent or bad motive. Therefore, good motive is no defense. Even * * * refusing upon advice of counsel is not reason or justification.²⁶

²⁶ The trial court further charged the jury that (R. 71-72):

[I]f you so find that there was such a failure to answer, you will determine whether it was wilful failure, and, therefore, a refusal as charged in the indictment. The word wilful does not mean that the refusal or failure to comply would necessarily be for evil or malicious purposes. That is beside the point. The reason for the refusal is immaterial so long as the refusal was a deliberate and intentional one rather than mere accident or oversight or inadvertence, or the result of a misunderstanding.

Now, I have already said that merely because the defendant may have misunderstood his right and may have thought that he had the right to refuse to answer because of the advice of counsel or for some other reason, that wouldn't be the type of misunderstanding that I have in mind. The kind of misunderstanding that I have in mind is a situation where he didn't understand that he was required to make an answer, that it hadn't been brought home to him that the questions asked were pertinent or

Petitioner neither proposed different instructions on this issue (R. 11-12) nor excepted to the charge (R. 75). Accordingly, the jury found petitioner guilty of having wilfully refused to answer, under proper and unchallenged instructions. This finding is fully supported by the record.

IV

THE SUBCOMMITTEE'S INVESTIGATION DID NOT VIOLATE THE FIRST AMENDMENT

In *Barenblatt v. United States*, *supra*, the Court held that "[w]here First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown" (360 U.S. at 126). In striking this balance, the courts must first determine whether the "investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose" (*id.* at 127).

that the subcommittee had overruled his objections and expected him to answer, notwithstanding his objections, or where a failure to answer was due to a misunderstanding of the question itself. If you believe beyond a reasonable doubt with respect to each count that the defendant refused to answer the question alleged in that count in the indictment and that that refusal was intentional and deliberate after a clear demand by the subcommittee to answer, notwithstanding his objection, then that aspect of the proof of the case would be satisfied.

A. THE SUBCOMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

In our brief in *Wilkinson*, No. 37, pp. 51-52, we show that, under this Court's decision in *Barenblatt*, 360 U.S. at 127-132, the two subjects under inquiry when petitioner testified—Communist infiltration and propaganda activity in the South—are valid legislative purposes, clearly not prohibited by the First Amendment.

Petitioner, however, attempts to distinguish *Barenblatt* on several grounds. First, he claims (Pet. Br. 20, 21, 22), that *Barenblatt* allows Congress only to investigate the Communist Party itself. In fact, however, *Barenblatt* involved an investigation of Communist activity in the field of education (see 360 U.S. at 121, 124, 129), not of the Communist Party itself, and the Court specifically held that such an investigation was not barred by the First Amendment (*id.* at 129-132). Similarly, the First Amendment does not forbid an investigation of Communist infiltration and propaganda activity.

Second, petitioner argues (Pet. Br. 19-20, 21) that *Barenblatt* upholds only Congress' power to investigate past and present Communist Party membership. It is true that *Barenblatt* specifically upheld only the questions relating to Party membership and found it unnecessary to consider the validity of *Barenblatt*'s conviction for refusal to answer questions which on their face do not directly relate to participation in or knowledge "of alleged Communist Party activities at educational institutions" (360 U.S. at 115). Neverthe-

less, the whole rationale of the decision supports the power of a congressional committee, having information of Communist activity in educational institutions, to inquire further into the nature of this activity. Thus, the Court held that Congress' power of investigation extends beyond its power to legislate, "for of necessity the investigatory process must proceed step by step" (360 U.S. at 130). Moreover, in distinguishing *Sweezy v. New Hampshire*, 354 U.S. 234, which involved an investigation of the content of a lecture at a university and a witness' connections with the Progressive Party, the Court stated that "[t]his is a very different thing from inquiring into the extent to which the Communist Party has succeeded in infiltrating into our universities, or elsewhere, persons and groups committed to furthering the objective of overthrow"²⁷ (360 U.S. at 129). If the Committee could only identify Communists active in education but could not inquire as to the extent or nature of their activity, the value of this information to Congress would be relatively slight. In fact, such information alone constitutes little more than exposure; only if the Committee can pursue the inquiry further is information necessary for the consideration and evaluation of legislation to be obtained.

²⁷ The Court cited at this point a statement by Representative Jackson (which it had earlier quoted) which says in part (360 U.S. at 122, note 20): "We [the Committee] are interested * * * in finding out who the Communists are and *what they are doing to further the Communist conspiracy*" (emphasis added).

In any event, one of the questions asked petitioner was whether, at a particular time,²⁸ he was a member of the Communist Party (count five; *supra*, p. 21). Since *Barenblatt* upheld two questions relating to that witness' past membership in the Communist Party (360 U.S. at 114, 126), this question in the present case was clearly proper. And, as we have emphasized, if one of the counts on which petitioner was convicted is valid, his conviction must be sustained (see *supra*, pp. 37, 54).

Third, petitioner repeatedly claims (Pet. Br. 21, 22-23, 24, 25, 27, 28, 29) that *Barenblatt* only allows investigation of violent overthrow of the Government and there is nothing in the record here that suggests that this investigation would have been of any value in protecting the Nation in this regard. In fact, however, *Barenblatt* noted the "close nexus between the Communist Party and violent overthrow of government" and therefore upheld an investigation "into the extent to which the Communist Party has succeeded in infiltrating into our universities, or elsewhere, persons and groups committed to furthering the objective of overthrow" (360 U.S. at 128-129). Thus, the nature of the Communist Party itself supplied the connection between the investigation of Communist activities and overthrow of the Government. The Court specifically rejected the need for any fur-

²⁸ That time was when petitioner signed a letter which he admitted having signed (see *supra*, p. 21). The letter shows that it was written between April 1956, when *Pennsylvania v. Nelson*, 350 U.S. 497, was decided, and July 1958, when the hearings were held.

ther showing of that connection in each individual committee investigation by stating that "[t]he strict requirements of a prosecution under the Smith Act * * * are not the measure of the permissible scope of a congressional investigation into "overthrow," for of necessity the investigatory process must proceed step by step" (*id.* at 130).²⁹

And fourth, petitioner argues (Pet. Br. 36-40) that the subcommittee was pursuing a series of non-legislative purposes: attempting to stifle the Committee's critics by subpoenaing them; considering whether to cite the Emergency Civil Liberties Committee as a Communist front; investigating political pressure put on Congress relating to security legislation; and investigating petitioner's motives in supporting integration and civil rights.

We show in our brief in *Wilkinson*, No. 37, pp. 51-52, that Party activity in the field of propaganda includes efforts to abolish or hinder the Committee. Similarly, Communist efforts to put pressure on Congress relating to security measures is also a form of Party propaganda. There is no reason to exclude arbitrarily, without logical reason, these particular forms of Party propaganda from Party propaganda activities in general. And just as *Barenblatt* held that Congress can investigate Communist activities in education, an area likewise protected by the First Amendment, so it can investigate Communist propaganda activities. Moreover, we show in *Wilkinson*, pp. 53-55, that even

²⁹ We also emphasize that the record shows that the purpose actually underlying the hearings was the danger from the Party of overthrow of the Government. See the Government's Brief in *Wilkinson*, p. 57, note 20.

if, for some reason, Party criticism of a congressional committee is not considered as a propaganda activity, Congress can nevertheless investigate such criticism by the Party because of the close connection between the Party and overthrow of the Government of the United States. The same principle should apply equally to Party efforts to pressure or influence Congress as to security measures.³⁰

In any event, while petitioner was questioned concerning a petition criticizing the Committee, these questions were the result of petitioner's own action. No questions were asked on this subject until petitioner himself produced the petition opposing the hearings and criticizing the Committee (U.S. Ex. 10, p. 2673). And none of the questions on which petitioner was convicted related to the petition or any other criticism of the Committee.³¹ The only question asked petitioner

³⁰ Insofar as petitioner claims that the Committee was attempting to stifle criticism of itself, he is attempting to challenge the motives of the Committee's members just as much as if he charged that the Committee was attempting to expose him. *Watkins v. United States*, 354 U.S. at 200, and *Barenblatt*, 360 U.S. at 132-133, hold that the courts have no authority to inquire into the motives of the members of a congressional committee when the committee is acting pursuant to its constitutional power. See our brief in *Wilkinson*, pp. 55-56.

³¹ Petitioner claims (Pet. Br. 36) that his association with the Emergency Civil Liberties Committee was investigated (counts three and four; see *supra*, pp. 19-20) because of that organization's criticism of the committee. But the record does not support this contention; on the contrary, the Staff Director told petitioner at the hearings and testified at his trial that the Committee had information that the principal officer of the Emergency Civil Liberties Committee was a Communist and that the organization was a Communist front (see *supra*, pp. 9, 10, 14). A Communist organization can hardly be immunized from investigation because it criticizes the Committee.

relating in any way to efforts to influence Congress as to security measures was that concerning whether petitioner was a Party member when he signed a letter asking the recipients to write their Congressmen (count five; see *supra*, p. 21). Apart from all else, this question does not delve far into the Party's activities in influencing Congress; on the contrary, it is simply the same kind of question as to Party membership upheld in *Barenblatt* (see *supra*, pp. 37, 54, 62).

The Staff Director of the Committee, testifying at petitioner's trial, suggested that one of the reasons for questioning petitioner about the Emergency Civil Liberties Committee (counts three and four; see *supra*, pp. 19-20) was to determine whether that organization should be cited as a Communist front (see *supra*, pp. 19-20 at note 8, 20-21 at note 9). But in this same testimony he repeatedly stated that the dominant purpose of the Committee as to these particular questions and petitioner's testimony as a whole was to evaluate existing and pending legislation (see *supra*, pp. 5, ~~18~~ 18, at note 8, 21 at note 9, ~~21~~ 22 at note 10, 22-23 at note 11).

The same statements were repeated numerous times by the Chairman of the Committee, the Chairman of the subcommittee, and the Staff Director throughout the hearings themselves (see *supra*, pp. 5, 12-14, and our brief in *Wilkinson*, pp. 4, 6-7, 12-13, 15-16, 17, 18, 22-23, 25). Thus, it would appear that "citation" of an organization as a Communist front was merely a designation that the organization was at least to a great extent Communist-controlled and should be regarded as such in considering the need for legislation. But

at note 9,
19-21

even if the "citation" of organizations is not considered as related to the evaluation of legislative proposals and is, as petitioner claims, a non-legislative purpose, the questions concerning the Emergency Civil Liberties Committee were intended to, and did, relate to the investigation of Communist propaganda activities (see *supra*, pp. 44, 52-53). Thus, the two questions as to the Emergency Committee each had a valid legislative purpose.

Petitioner, in contending that the subcommittee was investigating integration and civil rights, is raising once again the claim he made at the hearings. Representative Jackson emphatically denied this claim, at the hearings, by stating categorically that the subcommittee did not care about petitioner's opinions and was not concerned with integration or segregation; instead, he said, the subcommittee was investigating petitioner's actions on behalf of the Communist Party (see *supra*, p. 16). Even if, in fact, some of these actions concerned integration or civil rights, the Committee could still investigate them, not as part of an investigation of integration, but rather as part of an investigation of Communist activities. For, as this Court has recognized (see *Barenblatt*, 360 U.S. at 128-129), the ultimate objective of the Communist Party to which its intermediate and even laudable objectives (such as integration and civil rights) are directed, is overthrow of the Government of the United States. And whether or not Congress could ultimately legislate concerning such Communist activities, *Barenblatt* clearly indicates that the investigative power of Con-

gress extends beyond the limits of its powers to legislate (*id.* at 130).³²

B. THE BALANCE OF INDIVIDUAL AND GOVERNMENTAL INTERESTS
SUPPORTS THE SUBCOMMITTEE'S INQUIRY

In *Barenblatt*, this Court held that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134). In the Government's Brief in *Wilkinson*, pp. 55-60, we point out that the governmental interests at stake are at least as strong as those in *Barenblatt*. Since the same hearings and two of three subjects under inquiry are involved in this case and in *Wilkinson* (see *supra*, pp. 32-34), the governmental interest is virtually identical in both cases. Therefore we respectfully refer the Court to our brief in *Wilkinson*.

As in both *Barenblatt* and *Wilkinson*, the record indicates no effort by the subcommittee to pillory

³² In a lengthy appendix (Pet. Br. 51-65); petitioner cites other instances of allegedly non-legislative inquiries by the Committee. While we do not agree with most of petitioner's analysis, we do not believe it is necessary to answer these claims in detail. It is sufficient to note that the record of the hearings involved here either shows on its face that the allegations made by petitioner as to other hearings do not apply to it or, at least, does not support such allegations here. Even if we assume *arguendo* that the Committee has frequently indulged in other non-legislative inquiries, the constitutionality of an investigation, any more than of a statute, cannot be decided by citing other instances of legislative unconstitutionality. The responsibility of the judiciary when considering the constitutional power of another co-equal branch of the Government is far too serious to allow decision by such a process of analogy.

witnesses. On the contrary, the subcommittee patiently explored the valid legislative purposes of the inquiry and even suggested the possibility of petitioner's invoking the Fifth Amendment (see *supra*, pp. 12-14). Second, the relevancy of the questions, as we have seen (*supra*, pp. 42-54), is not open to doubt. Indeed, the question as to petitioner's membership in the Communist Party when he signed a particular letter is almost identical to the question upheld in *Barenblatt* as to whether Barenblatt was a member of a particular Communist Party club while at the University of Michigan (360 U.S. at 114, 126, note 25)—both questions related to Party membership at a time a few years before the question. Third, petitioner, unlike *Barenblatt*, was not involved in the field of education, which is perhaps a particularly sensitive area requiring the protection of the First Amendment.

Petitioner, however, argues (Pet. Br. 26-29) that the record does not show that petitioner was a Communist Party member or that the Southern Conference Educational Fund, the Emergency Civil Liberties Committee, or the Southern Newsletter had any connection with the Communist Party. Thus, petitioner appears to be claiming that, unlike in *Barenblatt*, his "appearance as a witness follow[ed] from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134), and that therefore the private interest of petitioner outweighs the governmental interest. But the fact is that petitioner was told four times at the hearings by the Staff Director that he

had been positively identified by reputable, responsible witnesses under oath as a Communist Party member and that the Committee had information that he was actively participating in Communist activity; one of these witnesses was disclosed to be Alberta Ahearn (see *supra*, pp. 12, 15, 16, 23; Hearings before the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary, United States Senate, 85th Cong., 1st Sess., p. 37). At petitioner's trial, the Staff Director stated, in detail, that the Committee had information that petitioner had travelled throughout the South on Party work which included setting up meetings and disseminating Party propaganda, that he had participated in such a meeting as a Communist in Atlanta in 1957, that he participated in the Southern Newsletter as a Communist, and had recently travelled to Rhode Island to meet with another leading Communist (see *supra*, pp. 8-11).

As to the Southern Conference Educational Fund, petitioner was told at the hearing that it was the successor organization of the Southern Conference for Human Welfare, which the Senate Internal Security Subcommittee had determined to be a Communist front (see *supra*, p. 23). Furthermore, petitioner, who was believed to be a Party member, admitted being a field organizer of the Fund (see *supra*, p. 11). The Staff Director stated at petitioner's trial that the Committee had information as to the above facts and said that petitioner was doing Party work including setting up meetings and distributing Party

propaganda in his capacity as a Fund organizer (see *supra*, pp. 8-9, 11).

The Staff Director explained to petitioner at the hearings and testified at the trial that Harvey O'Connor, who petitioner admitted and the Committee knew was the principal officer of the Emergency Civil Liberties Committee, had been identified as a "hard-core" member of the Communist Party and that the Emergency Committee had been determined by a congressional committee to be a Communist front (see *supra*, pp. 9, 10, 12, 14, 19-20 at note 8, 21 at note 9). At petitioner's trial, the Staff Director further testified that this organization was active in disseminating Communist propaganda (see *supra*, p. 21 at note 9).

Petitioner was also told at the hearings that the editor of the Southern Newsletter, Eugene Feldman, had been identified as a Communist (see *supra*, p. 22). In fact, only the previous day, Armando Penha, a former Party member, had testified that he knew Feldman as a Party colonizer in the South (see *supra*, p. 6). The Staff Director testified at petitioner's trial that the Committee had information that petitioner, who had been identified as a Communist, contributed to the Southern Newsletter, that it circulated in the South under Communist auspices, and that it was controlled by Communists (see *supra*, pp. 9, 10-11, 22-23 at note 11).

There is nothing in *Barenblatt* suggesting a requirement of *judicial proof* that the witness is a Communist Party member and that the organizations inquired into are Communist-controlled before a congressional committee can even investigate to ascertain the

facts.³³ If the Committee had such complete proof there would be little need for an investigation. Rather, *Barenblatt* recognized that "the investigatory process must proceed step by step" (360 U.S. at 130) and specifically required only the significantly less strict standard of "probable cause for belief that [the witness] possessed information which might be helpful to the Subcommittee" (360 U.S. at 134). We submit that the above information—much of it based on named witnesses before the Committee and on prior investigations by another congressional committee—provided adequate probable cause for belief that petitioner possessed information relating to the Committee's responsibility of investigating Communist activities.³⁴

³³ Petitioner objects to reliance on "undisclosed information" (Pet. Br. 27). By this he apparently means testimony of witnesses not themselves possessing personal knowledge (see Pet. Br. 27-28), since, as we have described, the Committee disclosed in considerable detail the nature of its information. Thus, petitioner is in effect demanding the virtual equivalent of evidence which would be required in a trial. In this regard, it is significant that probable cause for an arrest, with or without a warrant, may be satisfied by hearsay evidence, consistent with the Fourth Amendment. See *Draper v. United States*, 358 U.S. 307.

³⁴ Petitioner relies (Pet. Br. 25) on four cases, none of which is apposite. As we have shown, the standards laid down in *Barenblatt* are met here.⁶ Likewise, *Watkins v. United States*, *supra*, does not support petitioner's contentions. As to *Sweezy v. New Hampshire*, 354 U.S. 234, the Court stated in *Barenblatt* (360 U.S. at 129):

• • • The vice existing there was that the questioning of Sweezy, who had not been shown ever to have been connected with the Communist Party, as to the contents of a lecture he had given at the University of New Hampshire, and as to his connections with the Progressive Party, then

In sum, we believe that, as in *Barenblatt*, "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134).

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court of appeals should be affirmed.

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OCTOBER 1960.

on the ballot as a normal political party in some 26 states, was too far removed from the premises on which the constitutionality of the State's investigation had to depend to withstand attack under the Fourteenth Amendment. * * *

This is a very different thing from inquiring into the extent to which the Communist Party has succeeded in infiltrating into our universities, or elsewhere, persons and groups committed to furthering the objective of overthrow.

And in *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 465-466, this Court, in finding that the state had no valid interest in the membership list of the N.A.A.C.P., distinguished *Bryant v. Zimmerman*, 278 U.S. 63, on the ground that *Bryant* concerned the Ku Klux Klan, an organization committed to violence.

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IN THE

Supreme Court of the United States

October Term, 1960

No. 54

CARL BRADEN,

Petitioner,

—v.—

UNITED STATES

PETITIONER'S REPLY BRIEF

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IN THE
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No. 54

CARL BRADEN,

Petitioner.

—v.—

UNITED STATES.

PETITIONER'S REPLY BRIEF

The Government's response to Petitioner appears in its briefs herein and in *Wilkinson v. United States*, No. 37, this Term. The Government argues therein that the instant case is indistinguishable from *Barenblatt v. United States*, 360 U. S. 109, and that the decision in that case should be adhered to.

With respect to the differences between this case and *Barenblatt*, Petitioner rests upon the argument set forth in his principal brief (Point I, pp. 19-29). Should the Court feel that these differences are not sufficient, we urge that the *Barenblatt* decision be reconsidered.

We submit that the Committee's mandate as written and applied generally since its creation and in this case, has violated the First Amendment and has been used for exposure rather than for legislation.

I.

Rule XI (17) of the Rules of the House of Representatives authorizes the Committee to investigate "Un-American propaganda activities in the United States." An implementing section of the Rule authorizes the Committee "to require the attendance of such witnesses and the production of such books, papers and documents and to take such testimony, as it deems necessary." This delegation of power to compel American citizens to answer questions concerning "propaganda activities" violates the First Amendment's prohibition against "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." See Meiklejohn, *The Barenblatt Opinion*, 27 Univ. Chic. Law Rev. (1960) 329, 332. The qualification "Un-American" does not lend validity to the Rule, since that is a term used by the Committee to describe all opinions of which it disapproves.

The breadth of the term is indicated by its application in the pending contempt cases. It will be recalled in the early case of *United States v. Josephson*, 165 F. 2d 82, 88 *cert. den.* 333 U. S. 838, *reh. den.* 333 U. S. 858, a more restrictive interpretation upon this mandate was intimated by the Court of Appeals of the Second Circuit:

" * * * At the very least the language of the authorizing statute permits investigating the advocacy of the idea that the Government or the Constitutional system of the United States should be overthrown by force, rather than modified by the peaceful process of amendment of the Constitution set forth in Article V. The vice of vagueness in that language, if any, lies in the possibility that it may authorize, though we do not decide that it does so, investigations relating to the advocacy of peaceful changes. The appellant could, for example, have been asked whether he knew of propaganda activities designed

to bring about the immediate destruction of the Government by violence and the question, as he clearly would have known, would have been pertinent." . . .

That Court was not required to resolve the problem because, as it said:

"Having refused to answer any questions whatsoever, he cannot now claim that the authorizing statute is invalid merely because it did not furnish him with criteria that were sufficiently definite to permit him to determine the pertinency of some question that might never have been asked him." (*Ibid.*)

In this case and *Wilkinson's*, the Court below and the Government give the mandate a meaning going far beyond even "investigations relating to the advocacy of peaceful changes" (165 F. 2d at 88). "Un-American propaganda activities" are deemed to include criticism of the Committee; a petition to Congress is investigated because the petitioner might have been a Communist. *Wilkinson v. United States*, 272 F. 2d 783, 787; Govt. Br. in No. 37, pp. 27, 51-52; *Brader v. United States*, R. 118; Govt. Br. in No. 54, pp. 63-64.

We have thus come full circle from the investigation of the "advocacy of the idea that the Government or the Constitutional system of the United States should be overthrown by force" (*United States v. Josephson, supra*, at 88) to the investigation of "Communist criticism of the Committee and Communist petitions to Congress" (Govt. Br. p. 30). We know what the author of the concurring opinion in *Whitney v. People of State of Calif.*, 274 U. S. 357, 375, would have said:

" . . . that the greatest menace to freedom is an inert people; that public discussion is a political

duty; and that this should be a fundamental principle of the American government.

The history of the Committee's operations has borne out the sinister promise implicit in a mandate directed against "propaganda". It is a matter of widespread knowledge throughout the United States, and indeed the world, that the Committee exists as a major repressive force in this country against the exercise of activities protected by the First Amendment. This may not be clear if the Court considers each petitioner coming before it as if he were the only person who had ever been questioned by the Committee, but it is abundantly clear if the Court considers the twenty-two year history of the Committee.

In Appendix B to our principal brief herein (pp. 51-65), we have set forth in considerable detail the Committee's campaign against activities protected by the First Amendment. This analysis shows that the evils described in the prescient dissenting opinions of Chief Judges Clark and Edgerton, written respectively in *United States v. Josephson*, *supra*, and *Barsky v. United States*, 167 F. 2d 241, 252 (C. A. 2, 1948), *cert. den.* 334 U. S. 843 have been realized.

In the two cases now before the Court, the serious effect upon First Amendment rights is unescapable. If Frank Wilkinson, a resident of California, can be subpoenaed when and because he arrived in Atlanta, Georgia to engage in open criticism of the House Un-American Activities Committee, is he not being denied his constitutional right

* As Mr. Justice Brandeis said elsewhere (dissenting in *Gilbert v. Minnesota*, 254 U. S. 325, 337-338 (1920)):

"The right of a citizen of the United to take part, for his own or the country's benefit, in the making of federal laws and in the conduct of the government, necessarily includes the right to speak or write about them; to endeavor to make his own opinion concerning laws existing or contemplated prevail; and, to this end, to teach the truth as he sees it." * * *

to criticize the Government? See Kalven, *Mr. Alexander Meiklejohn and the Barenblatt Opinion*, 27 Univ. of Chic. Law Rev. 315 (1960).

Of what avail is it to exercise the right of criticism if a disapproving Government can impose the sanction of compulsory testimony? If petitioner herein can be subpoenaed and asked whether he was a member of the Communist Party at the time that he filed a petition with Congress, is not his right to file such a petition undermined? It should be borne in mind here that *the Government regards Count V, relating to petitioner's petition to Congress, as its strongest count* (Gov't Br., pp. 25, 37, 62).*

The use of the words in *Wilkinson*, "by impeding and crippling the operation of its legislative branch" (272 F. 2d 787) and in this case, "Communists were attempting to create the appearance of respectability", cannot derogate from the fact that the term "crippling" means no more than criticism, and that the propaganda for which "respectability" was allegedly sought in *Braden* was "propaganda" for integration.

The House Committee's activities have triggered numerous imitators on the national and local levels. Thus, *Shelton v. Tucker*, No. 14, October Term, 1960, is an example of the use of State law to interfere with membership in the NAACP by an inquiry into membership in various organizations. Similarly, *State of Florida v. Graham* (Cir. Ct. 2d Jud. Dist., Leon City, Fla.) involves convictions of two Negro ministers for refusing to surrender NAACP membership lists to a Florida legislative committee.

On the national level, the Senate's Internal Security Subcommittee has given rise to a host of cases, some now

* Similarly, see the Brief for the United States in Opposition, pp. 7-8, fn. 4.

pending in this Court, involving an interference with freedom of the press and other First Amendment rights?"

Each judicial decision supporting the power of investigation into activities thought to be protected by the First Amendment results in an expanding concept of legislative power. The earlier investigations began with the Communist Party (see e.g. *Barenblatt v. United States*). Later ones involved the NAACP (see *Shelton v. Tucker, supra*). More recently, they have involved the efforts of Dr. Linus Pauling and the Sane Nuclear Policy Committee to state their views on the issue of nuclear disarmament without interference by the Internal Security Subcommittee. See *Pauling v. Eastland*, No. 419, Oct. Term 1960, *cert. den.*

The fundamental defect in this massive loyalty investigation, we respectfully submit, lies in the *Barenblatt* concept that the interests of national security over-balance the individual's constitutional right of privacy. We do not assert here, of course, that national security is less important than the right of association. Our point is, that the surrender of the second right is not necessary for the protection of the first one and, indeed, may be inconsistent with it.** This Court has frequently observed that

* *Whitman v. United States*, No. 300, *Liveright v. United States*, No. 328, *Shelton v. United States*, No. 246, *Price v. United States*, No. 331, Oct. Term, 1960, *cert. pending*.

In addition, the validity of First Amendment claims before the House Un-American Activities Committee is raised in *Deutsch v. United States*, No. 233, Oct. Term, 1960, *cert. grant.* 29 L. W. 3102; *Gojack v. United States*, No. 313, *cert. pending*; and *Russell v. United States*, No. 239, *cert. pending*.

** The same problem was raised in the passport cases (*Kent & Briehl v. Dulles*, 357 U. S. 116). We respectfully call the Court's attention to the briefs filed in that case. There the Government sought to restrict the travel of individuals on the ground that they might commit unlawful actions abroad; here no claim of unlawful activity is asserted by the Government.

(Continued on page 7.)

a free and unharassed citizenry is the best guarantee of national security. See e.g., *Whitney v. Calif.*, *supra*, concurring opinion, *passim*, and fnns. 3-5.

We submit most respectfully that the Congress could not have been aided one whit in its search for new legislative weapons against Communism by learning whether *Barenblatt* was a Communist, as a prior witness had alleged. Certainly national security is not aided by calling critics of the Committee such as Braden and Wilkinson before it.

The balancing doctrine of *Barenblatt* has been subjected to different types of criticism recently, of which the most noteworthy are referred to in a footnote.* We respectfully refer the Court to these comments by conscientious critics who attempt to assess the full implications of this Court's opinion in *Barenblatt*. It is our earnest hope that if the point is reached by this Court it will proceed to a reconsideration of the *Barenblatt* doctrine.

. II.

The Government's briefs, First Amendment considerations aside, proceed upon the assumption, never quite explicit, that the Committee in the Atlanta investigations was seeking material for the purpose of recommending legislation to the Congress. We challenge this assumption.

(Continued from page 6.)

The House Committee has pressed this view that national security requires the disregard of all other rights by taking testimony from a psychiatrist with respect to confidential communications by a patient. (See Wingenbach, *Defectors And A Doctor's Oath*, N. Y. Herald-Tribune, Nov. 10, 1960, p. 28; also, Sidel, *Medical Ethics and the Cold War*, The Nation, Oct. 29, 1960.)

* Meiklejohn, *The Barenblatt Opinion*, 27 Univ. of Chic. L. Rev. 329 (1960); Kalven, *Mr. Alexander Meiklejohn and the Barenblatt Opinion*, 27 Id. 315 (1960); Carr, *A Seesaw Between Freedom and Power*, 57 Univ. of Illinois Bulletin No. 75 (June, 1960).

The Government asserts that "the two subjects under inquiry when petitioner testified—Communist infiltration and propaganda activity in the South—are valid legislative purposes" (Br., p. 60).

This indicates a confusion between the subject under investigation and the purpose of the investigation, i. e., whether it is legislative or for the purposes of exposure and interference with the right of association. Thus, in *United States v. Icardi*, 140 F. Supp. 383 (D. D. C. 1956), the subject under investigation was a perfectly legitimate one but the objective of the Committee therein involved was to secure a perjury indictment against a particular witness.

The Communist issue has been on the Committee's agenda for many years without any indication that legislation is intended or has resulted from the compulsory testimony of the putative objects of legislation (See Appendix B to our principal brief, pp. 51-65). The Committee's Annual Report for the year 1958 (H. Rep. 187, 86th Cong., 1st Sess.) does not support the Government's claims that the Atlanta hearings had a legislative purpose. The melange of testimony taken that year and the Committee's comments upon witnesses is essentially the same in each of its earlier annual reports. The discussion of "The Atlanta cases" (i.e., those of petitioner and *Wilkinson*) opens with this significant admission of the efforts at "exposure and punishment" and the reasons for subpoenaing these two persons:

"At a hearing of the committee in Atlanta on July 29, 1958, one of the subjects of investigation was Communist Party propaganda activities in the South. The committee had issued a publication on November 8, 1957, describing a newly mounted abolition campaign against the House Committee on Un-American Activities, the investigative powers of Congress, and important functions of the Federal

Bureau of Investigation, for the purpose of creating a general climate of opinion against the exposure and punishment of subversion. One of the Communist Party fronts described as being in the vanguard of this campaign was the Emergency Civil Liberties Committee." (p. 85).

The "legislative recommendations" in the Report are essentially the same ones that appear in every annual report of the Committee—regardless of whether there are hearings on these subjects or the nature of the testimony. We urge the Court to examine the annual reports of the Committee for the last five years for the purpose of confirming the validity of our charge. They relate to such matters as passports, the Smith Act and the loyalty program, which are clearly under the jurisdiction of other committees whose hearings and reports have led to the passage of bills on these subjects.

This Court will find particularly significant the Committee's recommendations in its 1958 annual report (issued March 9, 1959) of the following legislative proposals which the petitioner was told was the basis for his interrogation (R. 26):

1. *The proposed amendment of the Smith Act to define the word "organize"* to meet this Court's opinion in *Yates v. United States*, 298 U. S. 354. But the bill on this subject, H. R. 13272, 85th Cong., was reported by the House Judiciary Committee on August 6, 1958 and passed the House on August 12, 1958. (See *Calendars of the United States House of Representatives and History of Legislation*, 85th Cong. (Final Edition) p: 179).

2. *The proposed authorization of state sedition laws* to meet this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497. But the bill on this subject, H. R. 3, 85th Cong., was reported by the House Judiciary Committee June 13,

1958 and passed the House on July 17, 1958 (Calendars, etc., *supra*, p. 113) prior to petitioner's appearance.

These two examples, which could be repeated with respect to virtually every legislative proposal of the Committee, illustrate our point that the Committee holds hearings without regard to the nature of its recommendations and issues recommendations without regard to its hearings.

III.

We find most intriguing the Government's claim in *Wilkinson* that "the subcommittee was pursuing a valid legislative purpose even if it be assumed that its sole purpose was investigation of Communist Party criticism of the Committee and that such criticism does not constitute propaganda" (Br., p. 53).

The Government's argument is as follows:

1. "This Committee constantly has before it the issues whether it should be abolished, continue its present course or change or expand its activities."

2. In presenting the matter to the House of Representatives, "it is proper for the Committee to consider the source of the criticism at least where the Communist Party itself is the source of the criticism."

3. "The power of Congress to investigate—not to prohibit—petitioner's legal attempts to influence legislation is strongly supported by decisions of this Court", i.e., *Burroughs v. United States*, 290 U. S. 534 and *United States v. Harriss*, 347 U. S. 612.

While the Committee has often claimed a wide jurisdiction, it has never gone so far as the Government's suggestion that the desirability of continuing the Committee is a separate subject upon which the Committee was

authorized to compel testimony. Nor can we believe that the Government is seriously suggesting that the petitioner and Wilkinson were called because the Committee was considering a recommendation to Congress that it be abolished.

Further, assuming that the Committee may "consider the source of the criticism," (Govt. Br., No. 37, p. 54) may it do so by exercising its power of testimonial compulsion? Are Congressman James Roosevelt and Professor Alexander Meiklejohn, leading critics of the Committee, now subject to its questioning?

The Government's citation of *Burroughs* and *Harris* is relevant in that it shows how one grant of power leads to a demand for further power. The first case required the disclosure of financial contributors to election campaigns; the second required the disclosure of income and receipts of paid lobbyists. Neither case touched upon the present problem of First Amendment rights.

Recognizing the weakness of this argument, the Government argues that even if this objective is improper, Petitioner's conviction should stand if the Committee had some proper objectives. We do not understand how the Committee's bad purposes can be separated from the good. Moreover, as this Court has said: "One should not be held in contempt under a subpoena that is part good and part bad. * * * it is not upon the person who faces punishment to cull the good from the bad." *Bowman Dairy Company v. United States*, 341 U. S. 214, 221.

IV.

One further series of cases cited by the Government deserves comment (Gov't Br. No. 37, p. 57). None of them involved the problem presented here—the right of the Government to interrogate a citizen with respect to lawful

acts of association described in the instant case as "Un-American propaganda." Thus, *American Communications Association v. Douds*, 339 U. S. 382, involved the right of a labor union to use the processes of the National Labor Relations Board; *Garner v. Los Angeles Board*, 341 U. S. 716; *Adler v. Board of Education*, 342 U. S. 485; *Lerner v. Casey*, 357 U. S. 468, involved the power of governmental employers to make political inquiries of its employees; *Galvin v. Press*, 347 U. S. 522; *Harisiades v. Shaughnessy*, 342 U. S. 580; and *Carlson v. Landon*, 342 U. S. 524, related to the expulsion of aliens. *Dennis v. United States*, 341 U. S. 494, is completely irrelevant since it involves not the right of inquiry but the right to make certain conduct criminal, an issue not involved here.

Thus, again, we have seen the Government, starting with its plenary rights as employer, or as host to aliens, or as guardian of its agencies, pressing for and securing certain powers from the Congress and then attempting to treat the citizens generally as though they were in the special categories referred to above.

Such an attempt was made and these citations were offered in the recent passport cases, *Kent & Briehl v. Dulles*, *supra*. This Court adequately distinguished between the two categories. It should do so here.

V.

There are many other less important points in the Government's briefs in *Wilkinson* and *Braden* with which we take issue.* We do not regard them as sufficiently

* We refer *e.g.* to the claims that petitioner "admitted" that pertinency was an issue of law for the Court (Br. 26), that he "indicated that he understood the pertinency" (Br. 51), that the Committee actually had "information" that the organizations here involved disseminated Communist propaganda (Br. 44); that petitioner knew the "questioning and testimony" of prior witnesses (Br. 27, 69).

significant to make reply to them. They pale before the fundamental issues presented by these petitions: >

1. Is not the Government attempting in these cases, Wilkinson's and the petitioner's, to extend beyond its necessary and reasonable implications the drastic doctrine which emerged by a closely divided vote in the *Barenblatt* case?

2. Does not the interrogation of petitioner and of Wilkinson represent a most serious interference with the right to criticize the Committee, to seek its abolition and to take positions on legislation and public issues different from that of the Committee?

3. If, contrary to the view of petitioner, the *Barenblatt* doctrine controls these cases, then, should not *Barenblatt* be reconsidered and upon such reconsideration, reversed?

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JAMES R. BROWNING, Clerk

IN THE

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No. 54

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—v.—

UNITED STATES.

PETITION FOR REHEARING

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IN THE
Supreme Court of the United States

October Term, 1960

No. 54

CARL BRADEN,

Petitioner,

—v.—

UNITED STATES.

PETITION FOR REHEARING

Petitioner Carl Braden respectfully petitions for a rehearing in this matter decided February 27, 1961. In support of the petition, Petitioner respectfully shows and alleges:

I.

The Court's opinion has failed to address itself to the central fact in this case—that Petitioner was subpoenaed because he was active in the fight for integration. It has done so by disregarding

(1) Petitioner's background including the Committee's past interference with his integration work;

(2) the circumstances under which he was subpoenaed;

(3) the nature of the questions asked; and

(4) the comments of the Committee during his examination.

1. Petitioner, as the dissenting opinion and the Record show, "has for some time been at odds with strong senti-

ment favoring racial segregation in his home State of Kentucky" (Dissenting Opinion of Mr. Justice Black) (See R. 90, 107-108; Petitioner's Brief, pp. 3-5, 8, 14-15). It was in this connection that he was tried for sedition in Kentucky—and, significantly, that the House Committee on Un-American Activities supplied the state prosecuting authority with advice and nine key witnesses (Petitioner's Brief, p. 4, fn. 1).

2. This was only the beginning of the House Committee's harassment of petitioner for his integration activities. Following the State trial Petitioner determined to devote himself entirely to the struggle to implement this Court's decision in *Brown v. Board of Education*, 347 U. S. 483, and he and his wife became Field Secretaries of the Southern Conference Educational Fund. While there employed, he became Editor of its paper and opposed federal approval of state sedition legislation and filed a petition opposing the Committee's Atlanta hearings on the ground that both would be used against people supporting integration (R. 98-99, 107-108).

3. On July 22, 1958, the very date of the latter opposition, the House Committee issued a subpoena to Petitioner. The Committee has never suggested that this was mere coincidence. Instead, it directed its questions to Petitioner on the subject of the petition, the opposition to state sedition laws, and the work of the Southern Conference Educational Fund.

4. Most significant was the Committee's insulting comment concerning the Negro leaders who signed the petition, its claim that "[t]heir interest and major part [sic] does not lie with honest integrity" (R. 97) and its arrogant offer of the opportunity "to withdraw their names from that letter before it becomes a part of the official archives of our Committee" (R. 109).

It is no secret that many agencies of government, federal, state and local, are today engaged in attacks through the inquisitorial and registration processes against those private citizens who are working for integration in the South. This Court has protected the right of association in such cases as *N.A.A.C.P. v. Alabama*, 357 U. S. 449, and *Shelton v. Tucker*, 29 L. W. 4055, where state agencies were directing their fire against Negroes and their associations. But there cannot be a different rule because a Congressional committee is the aggressor or because it seeks to disguise its purposes by the familiar cry of Communism. This Court has frequently stated that it will not be misled by labels. The rule in *N.A.A.C.P. v. Alabama* was not intended to be limited to the protection of the organization therein involved. Nor obviously are the Caucasian's rights less than those of the Negro whose constitutional rights he supports. The doctrine of equal protection works both ways.

II.

The issue presented to this Court was a fact broader than that stated in *Wilkinson v. United States*, — U. S. —,¹ "that the Court of Appeals had misconceived the meaning of the *Barenblatt* decision" (Slip Op. 1). Petitioner urged further that the Committee's total history showed that its consistent purpose, function and effect was not legislative in character. In support of this contention Petitioner presented evidence ranging far beyond that presented in either *Barenblatt v. United States*, 360 U. S. 109, or *Watkins v. United States*, 354 U. S. 178. (Appendix B to Petitioner's principal brief.)

This evidence was not controverted by the Government. Nevertheless, this Court's opinions in both *Braden* and *Wilkinson* fail to address themselves to this basic argument.

¹ Since this Court's opinion in the instant case incorporates by reference its opinion in *Wilkinson*, No. 37, Oct. Term, No. 37, and since they present similar factual background and legal conclusions, we address ourselves to both opinions upon the petition for rehearing.

If Petitioner is correct and the House Committee on Un-American Activities itself and its predecessor, Special Committee have been for years little more than instruments of propaganda, rather than legislation, it should give this Court pause before making criminal sanctions available to the Committee. We urge that the Court at the very least require both parties to address themselves to this point upon reargument. The importance of the issue and the large number of similar cases now pending in this and the lower federal courts would make a thorough historical survey most advantageous to the Court.

III.

On a narrower scale—but a constitutional one as well—is the Court's acceptance of the Committee's unsupported claim that it had a legislative purpose in subpoenaing Petitioner and Wilkinson.

We believe that a re-examination of the record will establish to the Court's satisfaction the following:

- 1) There is no *evidence* that the subpoenas issued to these two men were intended to adduce grist for the legislative mill.

- 2) There are merely the unsupported assertions of a party in interest—the Committee.

- 3) All the evidence points to the fact that these two Petitioners were selected because they were critics of the Committee and in the case of Petitioner that the Committee disapproved of his activities in the field of integration.

We respectfully urge that the Court re-examine the premises for its conclusion as to legislative purpose.

In *Wilkinson* this Court has put the matter negatively: "Nor can we say on this record that the subcommittee was not pursuing a valid legislative purpose" (Slip. Op., p. 10).

We would have thought that the burden was the other way—on the Government to show that a legislative purpose *was* being pursued. But passing this point, the points relied upon by the Court for even this negative conclusion deserve its re-evaluation. For this is what they are:

(i) *The fact that the "Committee resolution authorizing the Atlanta hearing . . . expressly referred to two legislative proposals" (Wilkinson, Slip. Op., p. 10).*

While a statement of the legislation under consideration may be a *sine qua non* to a claim of legislative purpose, it can hardly be said to prove it. Any Congressman's executive assistant can draft a bill, any Congressman of standing can get it referred to his Committee, particularly if it has been skillfully drafted. It is a boot-strap argument for a Committee to assert a legislative purpose merely because it has followed these formalities. This is precisely the "mere semblance of legislative purpose" which this Court has said "would not justify an inquiry in the face of the Bill of Rights." *Watkins v. United States*, 354 U. S. 178, 198.

It is not without significance that this particular Committee had rarely bothered with such trappings until this Court's decision in *Watkins v. United States*, 354 U. S. 178. Then the Committee decided that a legislative bill could be used to prove a legislative purpose.

(ii) *"The Chairman's statement at the opening of the hearings contained a lengthy discussion of legislation" (Wilkinson, Slip. Op., p. 10).*

(iii) *"The Staff Director's statement to the petitioner also discussed legislation which the Committee had under consideration" (Wilkinson, Slip. Op., pp. 10-11).*

We challenge the statement that "All these sources indicate the existence of a legislative purpose" (Wilkinson, Slip. Op., p. 11). If they "indicate it" beyond a reasonable doubt, then, indeed, "saying makes it so." A legislative purpose is thus established by a cabalistic formula.

It is not possible to conceive of a situation where similar magic could not lead to a conviction.

In *Braden* this Court concluded for the same reasons "that the subjects under subcommittee investigation at the time the Petitioner was interrogated were Communist infiltration into basic southern industry and Communist Party propaganda activities in the southern part of the United States." (Slip. Op., p. 2).

This is hardly a statement that the Committee had a legislative purpose in examining Petitioner. This Court's opinion is addressed to the Atlanta hearings as a whole, not to the inquiry of Petitioner. If, however, this Court intended the latter, the comments made by us above (pp. 4-5) are applicable here.

The Court apparently accepts as binding upon both it and the Petitioner the self-serving declarations of such interested individuals as the Committee Chairman and Staff Director. This is an abdication of "the ultimate reviewing responsibility of this Court." *Barenblatt v. United States*, 360 U.S. 109, 124. We believe that Petitioner is entitled to this Court's independent evaluation of the Committee hearings. Were it to do so upon reargument, we believe that it would come to two conclusions:

(i) *that the Atlanta hearings as a whole were merely a new showing of the Boston hearings.*² If the Boston hearings had a legislative purpose, which we deny, that purpose was exhausted before the hearings were repeated in Atlanta. These two hearings had the same "friendly witnesses" who named the same "unfriendly witnesses" and unfriendly publications.

The only differences pointed up the non-legislative purposes of the hearings (a) different newspaper coverage

² Hearings before the House Committee on Un-American Activities on *Investigations of Communist Activities in the New England Area*, Parts 1-3, 85th Cong. 2d Sess.

and (b) different "unfriendly witnesses" who testified to nothing in either city. Surely this dramatic repetition of the same theme with the same protagonists was suspicious enough to require an explanation before a claim of legislative purpose could be accepted and a criminal conviction sustained. The Government is not relieved in contempt cases under 2 U. S. C. 192 from the burden of proof imposed generally in criminal cases.

The Court stated, however, that since "a prime purpose of the hearings was to investigate Communist propaganda activities in the South," it was "logical" to subpoena Wilkinson after he had arrived in Atlanta and had "registered as a member of a group whom the subcommittee believed to be Communist dominated, and had conducted a public campaign against the subcommittee" (Slip Op. 12).

It was indeed logical to subpoena Wilkinson if the Committee wanted to suppress criticism. But was it logical if its purpose was "to investigate Communist Party activities in the South" (Slip Op., p. 2)? The Record in neither *Wilkinson* nor *Braden* contains an iota of evidence that criticism of the Committee was "Communist activities." There is no proof that the Committee "believed" the Emergency Civil Liberties Committee to be "Communist dominated", to use this Court's words (*Wilkinson*, Slip Op., p. 12) unless that term is expanded to include the self-serving conclusions of paid Committee agents. There is certainly no proof that the Emergency Civil Liberties Committee was in fact so dominated unless we can draw this inference from its "public campaign against the subcommittee" (*ibid.*).

(ii) *that the issuance of subpoenas to Wilkinson and Braden were specifically motivated by a determination to harass the Committee's critics.*

We submit most deferentially that the Court's treatment of this latter point is couched in language which

avoids the issue and disregards the realities. Let us attempt to establish this point:

(1) What were the distinctive characteristics of Braden and Wilkinson in the summer of 1958 which marked them from others and which explains *why* they were subpoenaed? Both were vigorous opponents of the Committee; one was contemporaneously writing to Congress to oppose its appearance in Atlanta on the ground, proven accurate in this case, that it would be used against those supporting integration; the other was appearing personally in Atlanta to oppose its activities.

In *Wilkinson*, the Court begins, we submit, with two erroneous assumptions:

(a) It refers to the Wilkinson's claim that his criticism of the Committee was "the sole reason" for interrogating him. If this were one of several reasons, the others being valid, would that not render the examination invalid?

(b) After noting that Wilkinson had been subpoenaed only after it was discovered that he had arrived in Atlanta to oppose the Committee, this Court says that "[t]hese circumstances do not *necessarily* lead to the conclusion that the subcommittee's intent was personal persecution of the petitioner" (Slip Op., p. 12). While we believe that they do *necessarily* lead to that conclusion—is it not sufficient for the defendant in a criminal case involving First Amendment rights, where the Government has the burden of proof, to note that they *may* lead to that conclusion.

This is hardly the "indisputably clear" burden imposed upon the Government in *Sacher v. United States*, 357 U. S. 576, 578 (concurring opinion of Mr. Justice Harlan)..

Finally, in *Wilkinson*, this Court says that it may not "speculate" as to the "motivations" of "individual" Congressmen (Slip Op., p. 12). If the Committee as a whole must have a legislative purpose, is Petitioner to be denied the opportunity to establish its absence? We believe that Petitioner is entitled to the determination necessary under the Constitution and statute as to the existence *et non* of legislative purpose. If this Court is to eliminate legislative purpose as a precedent to a finding of crime under 2 U. S. C. 192, it should say so explicitly so that future witnesses are adequately warned.

The *Braden* opinion is even scantier on the subject of legislative purpose. Oblique reference to the subject may be gleaned from the Court's discussion of the First Amendment issue,³ but little more.

IV.

The Court has extended *Barenblatt* by holding that the Committee is authorized by statute to investigate its critics because of their criticism. The Court holds, further, that this statute, so construed, is constitutional. Put so baldly, this is rather shocking, but we see no other way to put it.

The Court's opinions appear to fuse and hence to fail to discriminate between the two different problems of statutory authority and constitutional validity.

1. As to the first problem: this is not a Committee authorized to investigate lobbying—assuming for the moment that criticism of the Committee may be thus characterized. When Congress intended to investigate lobbying, it wrote a Committee charter which the Court restrictively interpreted. *United States v. Rumely*, 345 U. S. 41.⁴ Indeed, the Resolution involved in *Rumely* may more fairly be construed to include the activities whose investigation

³ Slip. Op., p. 3.

⁴ See also *United States v. Harris*, 347 U. S. 612, 624-625 (1954).

this Court banned, than the Resolution involved here can be said to include criticism of the Committee. No accepted canon of statutory construction can subsume criticism of the Committee under the heading of "Communist Party Propaganda Activities in the South." Why should not the same First Amendment considerations which determined *Rumely* be applied to this case?⁵

In *Braden* this Court said that the subcommittee "had reason to believe that petitioner was a member of the Communist Party, and that he had been actively engaged in propaganda efforts" (Slip Op., p. 4). *If it will re-examine the record in this case it will see that these statements cannot be supported.* Surely the hearsay charges of the Committee's paid Staff Director cannot supply the constitutional requirements implied in that statement. The only "propaganda efforts" reflected in the record are directed against the segregation condemned by the Constitution and by this Court.

It was gross calumny for the Committee's Staff Director to say that "Mr. Wilkinson had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South of a group known as the Emergency Civil Liberties Committee . . ." (Slip Op., p. 13, fn. 9). This Committee is an independent group of liberal university professors and other leading members of the community. This Court has failed to consider the propriety and implications of its recitation of such unsupported charges as a basis for upholding a criminal conviction.

⁵ "Of course discussion cannot be denied and the right, as well as the duty of criticism must not be stifled" (*Beauharnais v. Illinois*, 343 U. S. 250, 264), where Mr. Justice Frankfurter also referred to "the whole doctrine of fair comment as indispensable to the democratic political process" (*Id.* at 263, fn. 18), and concluded, "Political parties, like public men, are, as it were, public property" (*Ibid.*). There was no indication that the House Committee on Un-American Activities was to receive protective exception from this doctrine.

The Court has foreshortened the focus of its analysis by considering "only the question covered by the fifth count, going to the petitioner's Communist Party membership" (Slip Op., p. 2).⁹ In the present case the Court has precluded itself from studying the broad context in which the so-called "Communist Party" question was put. Such a study would have shown that the Committee was concerned not with the Communist Party but with the Emergency Civil Liberties Committee and the Southern Conference Educational Fund, whose only activities were the advancement of civil liberties and civil rights.

This Court's statement that "[T]he transcript of the subcommittee hearings makes clear, however, that these activities [referring to the Southern Conference's promotion of racial integration] as such were not under investigation" (Slip Op., p. 3, fn. 4). Without commenting upon the significance of the expression "as such", we think it fair to inquire as to the basis for this Court's conclusion. The only ground stated is the self-serving declaration of a Congressman not under oath and his charge with respect to the two hundred Negro leaders that "their interest and major part does not lie with honest integration" (Slip Op., p. 3). Is a criminal conviction to be sustained because of this obviously unsupported broadside by a Committee member?

2. As to the second problem, that of constitutionality: Had the Committee been authorized to investigate advocacy of constitutional liberty or criticism of the Committee, we should seriously question the validity of such authorization for the reasons set forth in the opinions of Justices Frankfurter and Douglas in the *Rumely* case.

It should also be noted that neither Wilkinson nor Braden were lobbyists since one served to arouse public opinion among his fellow citizens in Atlanta and the other

⁹ We also respectfully differ with Mr. Justice Black's agreement with this procedure. (Dissenting Opinion, p. 3, fn. 3).

by a letter to his friends. The Congressmen were thus insulated against direct "propaganda"—assuming that they were entitled to such protection.⁷

We know of no decision of this Court prior to the instant ones authorizing compulsory testimony by those whose only sin was to address their fellow citizens on a legislative issue. Certainly none is cited in the opinions under discussion here.

We wish to meet another concept developed in these opinions: that the Congress has some visitorial power to protect private associations against "infiltration." Thus in *Braden*:

"Information as to the extent to which the Communist Party was utilizing legitimate organizations and causes in its propaganda efforts in that region (the Southern States) was surely not constitutionally beyond the reach of the subcommittee's inquiry" (Slip Op., p. 4).

It is possible that this casual but far reaching comment was made because counsel failed to address themselves directly to this point. We seek to do so here upon reargument. The power to investigate the Communist Party or Communist propaganda (a power we believe inconsistent with the First Amendment) means exactly that. It is not the power to investigate other organizations or even Communist writing if it is inoffensive. We think that under *DeJonge v. Oregon*, 299 U. S. 353, Oregon could not have subpoenaed DeJonge to inquire whether the lawful statements made at his public meeting were in fact a Communist device to achieve respectability by lawfulness.

The right of private association is drastically impaired if all "legitimate organizations" (Slip Op., p. 4), church,

⁷ The Committee's counter-part, the Internal Security Subcommittee of the Senate Judiciary Committee, has now recommended legislative restrictions upon the constitutional right of petition. N. Y. Times, March 18, 1961, p. 10.

trade union, political and social are to be the subject of investigation to determine if they are being "utilized." And utilized for what?: To oppose the House Un-American Activities Committee.

This decision also apparently justifies the investigation of

"rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities" (Slip Op. *Wilkinson*, p. 13, fn. 9).

This is a rather strange conception of democracy. In *Dennis v. United States*, 341 U. S. 494, *American Communications Association v. Douds*, 339 U. S. 382, and many similar decisions which appear to infringe upon constitutional rights, this Court took pains to emphasize its distaste for a totalitarian way of life. How shall we describe a system of government under which criticism of its policemen, its security program and this Committee is deemed reason for compelling its critics to appear under subpoena and testify to their good faith? As we read the Court's opinions, these critics may be safe, although that is not quite clear, provided no one has ever called them Communist supporters. The number of American liberals and conservatives so characterized by the Committee is legion.*

* For a small sampling see the distinguished University professors, artists, newspaper publishers and editors, religious leaders, psychiatrists, lawyers, characterized by the Committee as having "Communist-front connections" and now under the Court's decision eligible for subpoenas. *Review of the Scientific & Cultural Conference for World Peace*, Apr. 19, 1949; *Testimony of Bishop G. Bromley Oxnam*, Hearings, 83d Cong. 1st Sess., July 21, 1953 (particularly Oxnam Exh. No. 2 opposite p. 3598); *Report on Southern Conference for Human Welfare*, H. Rep. 592, 80th Cong. 1st Sess. (1947) (particularly "Table showing connections with Communist front organizations or Communist Activities, pp. 14-16"); [cf. *Gellhorn*], *Report on a Report of the House Committee on Un-American Activities*, 60 Harv. L. Rev. 1194; *Testimony of Dr. Edward U. Condon*; Hearings 82d Cong. 2d Sess., Sept. 5, 1952.

V.

We do not press in this petition the issue of the function of the jury to determine pertinency since there are admittedly deficiencies in the record. That issue we believe deserves presentation anew to this Court in other cases.

We do believe that the Court has not given sufficient consideration to the remaining point: whether Petitioner's reliance upon this Court's decision in *Watkins v. United States*, *supra*, did not remove the necessary element of criminal intent. In this respect counsel must accept the responsibility for an incomplete development of the argument and seek to repair that error here.

In its opinion herein Petitioner is said to claim that "in refusing to answer the subcommittee's questions he relied upon *his understanding* of the meaning of previous decisions of this Court" (Slip Op., p. 5; italics ours). Petitioner's claim was in fact broader—that he relied upon the common informed understanding of this Court's decision in *Watkins*, and that his reliance was a reasonable one.

This Court's answer is that "an almost identical contention was also rejected in *Sinclair v. United States*," 279 U. S. 263 (Slip Op., p. 6).

While we believe that *Sinclair* is clearly distinguishable (see *infra*, pp. 15-16), there are more important considerations of public policy which this Court has overlooked: that stated by Mr. Justice Cardozo; namely the need to determine the issue "not by metaphysical conceptions of the nature of judge-made law nor by the fetich of some implacable tenet such as that of the division of governmental powers; but by considerations of convenience, of utility, and of the deepest sentiments of justice." *The Nature of the Judicial Process* (1928), 148-149.

These words were addressed to the very problem now before the Court: "a change of ruling in respect of the

validity of a statute and a change of ruling in respect of the meaning or operation of a statute, or even in respect of the meaning or operation of a rule of common law" (*ibid.*):⁹

Watkins, decided in 1957, made a broad attack upon the validity of the Committee's charter (354 U. S. 178, 201, 202-203, 204, 205, 209). This was recognized in the dissenting opinion of Mr. Justice Clark in the same case (354 U. S. 178, at 222) and in Mr. Justice Black's dissenting opinion in *Barenblatt*, 360 U. S. 109, 138. It was so recognized by the Committee on Un-American Activities,¹⁰ by its Chairman,¹¹ by his associates,¹² It was so recognized by the commentators.¹³

If the Courts have protected property rights in civil litigation under these circumstances (see Cardozo, *supra*, at pp. 146-149, and cases cited), do not the considerations of elemental fairness which court, call due process¹⁴ call for at least an equivalent protection of personal liberty in criminal cases?

The argument of Sinclair's counsel, however able (see Appellant's Brief in *Sinclair v. United States*, pp. 118-134) is very different from the point herein made. (See also the

⁹ Mr. Justice Cardozo was suggesting these different possibilities without deciding that all should be governed by the rule applicable to the first cited situation.

¹⁰ "Judge Kent of the District Court for the Western District of Michigan was the first member of the judiciary to disagree with the sweeping statements made by way of *obiter dicta* by Chief Justice Warren in the *Watkins* case relative to investigatory power of the Committee on Un-American Activities * * *." (H. Rep. No. 1251, 86th Cong., 2d Sess., p. 123.)

¹¹ N. Y. Times, July 12, 1957, p. 8; Jan. 6, 1959, p. 18.

¹² Cong. Rec. June 19, 1957, p. 9725; June 27, 1957, pp. 10525, 10542; Jan. 15, 1959, p. 648.

¹³ In addition to the commentators cited in our principal brief, p. 43; see The Supreme Court, 1956 Term, 71 Harv. Law Rev. 1, 141-146 (1957), Note, 46 Ill. Bar J. 409, 412 (1957), *Recent Cases*, 106 Univ. of Pa. Law Rev. 124, 126 (1957).

¹⁴ *Palko v. Connecticut*, 302 U. S. 319.

Government Brief in *Sinclair*, pp. 100-105.)¹⁵ Surely there is a difference between the advice of one's counsel and the opinions of this Court.

The second distinction from *Sinclair* is that here First Amendment rights are directly involved, as this Court recognized in *Barenblatt, supra*, at 126. In such case the Government's burden is much greater, the witness' discretion wider and this Court's reading of Congressional mandate more rigid because "vagueness might induce individuals to forego their rights of speech, press and association for fear of violating an unclear law." *Scull v. Virginia*, 359 U. S. 344, 353. Similarly *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 462-463; *Smith v. California*, 361 U. S. 147, 154-155, and *Talley v. California*, — U. S. —, 28 L. W. 4186.

VI.

Petitioner would not urge rehearing if he alone were affected by this decision. But scores of other persons under indictment may be directly affected by the decisions in *Wilkinson* and *Braden*, and hundreds of others will "forego their rights of speech, press and association", *Scull, supra*, for fear of criminal consequences.

These two opinions do not represent, it is suggested with all deference, the comprehensive analysis of the problem which should precede so drastic an allocation of power to a single Committee of Congress over the individual's admitted rights of association. These two opinions do not address

¹⁵ Said the Government at p. 104:

"His refusal to answer is a deliberate and wilful one, made even more deliberate and wilful when, as here, the witness deliberates with his counsel before declining to answer."

themselves to the points made by this Court in *Watkins* and they represent a major extension of *Barenblatt*. They deserve the careful reconsideration by this Court before they become an established part of our law.

Respectfully submitted,

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Certificate of Counsel

I, LEONARD B. BOUDIN, do hereby certify that I am counsel for the petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

LEONARD B. BOUDIN.

March 22, 1961.

SUPREME COURT OF THE UNITED STATES

No. 54.—OCTOBER TERM, 1960.

Carl Braden, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
United States. } peals for the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case is a companion to *Wilkinson v. United States*, decided today, *ante*, p. —. The petitioner was the witness immediately preceding Wilkinson at the hearing of a subcommittee of the House Un-American Activities Committee, in Atlanta, Georgia, on July 30, 1958. He refused to answer many of the questions directed to him, basing his refusal upon the grounds that the questions were not pertinent to a question under inquiry by the subcommittee, and that the interrogation invaded his First Amendment rights. He was subsequently indicted and, after a jury trial, convicted for having violated 2 U. S. C. § 192, in refusing to answer six specific questions which had been put to him by the subcommittee.¹ The Court of Appeals affirmed, 272 F. 2d 653, relying on *Barenblatt v. United States*, 360 U. S. 109, and we granted certiorari, 362 U. S. 960.

The principal issues raised by the petitioner are substantially identical to those considered in *Wilkinson*, and extended discussion is not required in resolving them. Based upon the same record that was brought here in *Wilkinson*, we conclude for the reasons stated there that the subjects under subcommittee investigation at the time

¹ The indictment was in six counts, each count setting out a specific question which the petitioner had refused to answer. He was convicted on all six counts, and concurrent sentences were imposed.

the petitioner was interrogated were Communist infiltration into basic southern industry and Communist Party propaganda activities in the southern part of the United States. We conclude for the same reasons that the subcommittee's investigation of these subjects was authorized by Congress, that the interrogation was pertinent to a question under subcommittee inquiry,² and that the petitioner was fully apprised of its pertinency.

In asserting a violation of his First Amendment rights, the petitioner here points out that he was asked, not simply whether he was or had been a Communist Party mem-

² The questions which were the subjects of the six counts of the indictment were as follows:

"And did you participate in a meeting here at that time?"

"Who solicited the quarters to be made available to the Southern Conference Educational Fund?"

"Are you connected with the Emergency Civil Liberties Committee?"

"Did you and Harvey O'Connor, in the course of your conference there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?"

"Were you a member of the Communist Party the instant you affixed your signature to that letter?"

"I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?"

The full transcript of the petitioner's interrogation by the subcommittee, introduced in the District Court, makes intelligible the relevance of these questions. Since concurrent sentences were imposed on the several counts, we need specifically consider here only the question covered by the fifth count, going to the petitioner's Communist Party membership. See *Barenblatt v. United States*, 360 U. S. 109, 115; *Claassen v. United States*, 142 U. S. 140, 147.

³ As in *Wilkinson*, by the resolution authorizing the subcommittee's investigation, by the statements of the Chairman and other members of the subcommittee, by the tenor of interrogation of prior witnesses, and by a lengthy explanatory statement addressed contemporaneously to the petitioner.

ber, as in *Wilkinson* and *Barenblatt*, *supra*, but whether he was a member "the instant you affixed your signature to that letter." The letter in question, which had admittedly been signed by the petitioner and his wife, urged opposition to certain bills in Congress. The petitioner emphasizes that the writing of such a letter is not only legitimate but constitutionally protected activity, and points to other evidence in the record to indicate that he had been active in other completely legitimate causes. Based upon these circumstances, he argues that the subcommittee did not have a proper legislative purpose in calling him before it, but that it was bent rather on persecuting him for publicly opposing the subcommittee's

For example, the petitioner points out that the "Southern Conference Educational Fund" with which he had been associated had been active in promoting racial integration in the South. The transcript of the subcommittee hearings makes clear, however, that these activities as such were not under investigation. As a member of the subcommittee stated:

"What I am interested in, is what are you doing on behalf of the Communist Party? We are not going to be clouded, so far as I am concerned, by talking about integration and segregation. This committee is not concerned in that. This committee is concerned in what you are doing in behalf of the Communist conspiracy."

At another point the following colloquy occurred:

"Mr. Braden: Two hundred Negro leaders in the South petitioned the Congress of the United States last week in connection with this hearing in Atlanta.

"Mr. Jackson: After looking at some of the names on this list, the letters went into the circular file of many members, because it was quite obvious that a number of names on that letter were names of those that had been closely associated with the Communist Party. Their interest and major part does not lie with honest integration. Their interest lies with the purposes of the Communist Party. And that is what we are looking into, and let us not be clouding this discussion and this hearing this morning by any more nonsense that we are here as representatives of the United States Government to further, or to destroy, or to have anything to do with, integration."

activities. He contends that under such circumstances an inquiry into his personal and associational conduct violated his First Amendment freedoms. On these grounds, the petitioner would differentiate the constitutional issues here from those that were before the Court in *Barenblatt, supra*.

But *Barenblatt* did not confine Congressional Committee investigation to overt criminal activity, nor did that case determine that Congress can only investigate the Communist Party itself. Rather, the decision upheld an investigation of Communist activity in education. Education, too, is legitimate and protected activity. Communist infiltration and propaganda in a given area of the country, which were the subjects of the subcommittee investigation here, are surely as much within its pervasive authority as Communist activity in educational institutions. The subcommittee had reason to believe that the petitioner was a member of the Communist Party, and that he had been actively engaged in propaganda efforts. It was making a legislative inquiry into Communist Party propaganda activities in the southern States. Information as to the extent to which the Communist Party was utilizing legitimate organizations and causes in its propaganda efforts in that region was surely not constitutionally beyond the reach of the subcommittee's inquiry. Upon the reasoning and authority of *Barenblatt*, 360 U. S., at 125-134, we hold that the judgment is not to be set aside on First Amendment grounds.

The petitioner in this case raises two additional issues that were not considered either in *Barenblatt, supra*, or in *Wilkinson, supra*. First, he says that it was error for the trial court not to leave it for the jury to determine whether the questions asked by the subcommittee were pertinent to the subject under inquiry. Secondly, he asserts that

he could not properly be convicted, because in refusing to answer the subcommittee's questions he relied upon his understanding of the meaning of previous decisions of this Court. We think that both of these contentions have been foreclosed by *Sinclair v. United States*, 279 U. S. 263.

At the trial the district judge determined as a matter of law that the questions were pertinent to a matter under inquiry by the subcommittee,⁵ leaving to the jury the question whether the pertinence of the questions had been brought home to the petitioner. It is to be noted that counsel made no timely objection to this procedure and, indeed, affirmatively acquiesced in it.⁶ But we need not base rejection of the petitioner's contention here on that ground, for in any event, it was proper for the court to determine the question as a matter of law. This is precisely what was held in *Sinclair v. United States*, where the Court said at 279 U. S. 299: "The reasons for holding relevancy and materiality to be questions of law . . .

⁵ "You will note that each count in the indictment alleges that the refusal was with reference to a question pertinent to the matter under inquiry. You will not concern yourselves with this allegation as it involves a matter of law which it is the Court's duty to determine and which has been determined. I have determined as a matter of law that the committee had the right to ask these questions and the defendant had the duty to answer these questions under the conditions that I will later explain."

⁶ In his opening statement to the jury, counsel for the petitioner said: "As the counsel for the government has properly stated, the question of whether or not those questions were pertinent to the subject matter under inquiry has been ruled to be a question of law for the Court. But whether or not the defendant Carl Braden at the time he refused to answer those questions knew that they were pertinent to the subject matter under inquiry is a question of fact which will be submitted by the Court to you gentlemen." Not until after the concluding arguments and the instructions to the jury did counsel claim for the first time that the question of actual pertinency was not for the court to decide.

apply with equal force to the determination of pertinency arising under § 102 [the predecessor of 2 U. S. C. § 192]. The matter for determination in this case was whether the facts called for by the question were so related to the subjects covered by the Senate's resolutions that such facts reasonably could be said to be 'pertinent to the question under inquiry. It would be incongruous and contrary to well-established principles to leave the determination of such a matter to a jury.'

During his interrogation the petitioner was asked: "Now do I understand that you have refused to answer the question as to whether or not you are now a member of the Communist Party solely upon the invocation of the provisions of the first amendment, but that you have not invoked the protection of the fifth amendment to the Constitution. Is that correct?" He gave the following answer: "That is right, sir. I am standing on the Watkins, Sweezy, Königsberg, and other decisions of the United States Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States, protecting any right to private belief and association."

It is now argued that because he relied upon his understanding of this Court's previous decisions he could not be convicted under the statute for failing to answer the questions. An almost identical contention was also rejected in *Sinclair v. United States, supra*, at 299: "There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel. The gist of the offense is refusal to answer pertinent questions. No moral turpitude is involved. Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliber-

ate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of law is no defense.

Here, as in *Sinclair*, the refusal to answer was deliberate and intentional.

Affirmed.

¹ This was reaffirmed in *United States v. Murdock*, 290 U.S. 389, 397, where it was said: "The applicable statute did not make a bad purpose or evil intent an element of the misdemeanor of refusing to answer, but conditioned guilt or innocence solely upon the relevancy of the question propounded. Sinclair was either right or wrong in his refusal to answer, and if wrong he took the risk of becoming liable to the prescribed penalty." See also *Watkins v. United States*, 354 U.S. 178, 208.

SUPREME COURT OF THE UNITED STATES

No. 54.—OCTOBER TERM, 1960.

Carl Braden, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
United States. } peals for the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS concur, dissenting.

The petitioner in this case, as is shown by the facts set forth in the dissenting opinion of MR. JUSTICE DOUGLAS, in which I concur, has for some time been at odds with strong sentiment favoring racial segregation in his home State of Kentucky. A white man himself, the petitioner has nonetheless spoken out strongly against that sentiment. This activity, which once before resulted in his being charged with a serious crime,¹ seems also to have been the primary reason for his being called before the Un-American Activities Committee. For the occasion of that Committee's compelling petitioner to go from Rhode Island, where he was vacationing, to Atlanta for question-

¹ In 1954 petitioner and his wife were indicted and petitioner was convicted of sedition by the State of Kentucky, for which he received a sentence of imprisonment for 15 years. This prosecution grew out of events surrounding petitioner's helping a Negro family to purchase a home in an all-white suburb of Louisville. The charges against petitioner and his wife were eventually dismissed following this Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497. See *Braden v. Commonwealth of Kentucky*, 291 S. W. 2d 843. For the prosecution's version of this case, see the testimony of the State Attorney General and the Commonwealth Attorney for Louisville (the latter having served as prosecutor in the case) before the Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., pp. 2-23. For the Bradens' version of the case, see Anne Braden, *The Wall Between*.

ing appears from the record to have been the circulation of two letters, both in the nature of petitions to Congress, urging that certain legislative action be taken which, in the view of the signers of the petitions, would help those working against segregation. One of these petitions, signed by petitioner and his wife, asked those who read it to urge their representatives in Congress to vote against proposed legislation which would have empowered the States to enact antisedition statutes because, in the view of the signers, those statutes could too readily be used against citizens working for integration. The other petition, bearing the signature of 200 southern Negroes, was sent directly to the House of Representatives and requested that body not to allow the Un-American Activities Committee to conduct hearings in the South because, so the petition charged, "all of its [the Committee's] activities in recent years suggest that it is much more interested in harassing and labeling as 'subversive' any citizen who is inclined to be liberal or an independent thinker." The record shows that the Committee apparently believed that petitioner had drafted both of these petitions and that he had circulated them, not—as would appear from the face of the petitions—for the purpose of furthering the cause of integration, but for the purpose of furthering the interests of the Communist Party, of which the Committee claimed to have information that he was a member,² by fomenting racial strife and interfering with the investigations of the Un-American Activities Committee.

² So far as appears from the record, the evidence relied upon by the Committee to substantiate its claim that petitioner is or has been a member of the Communist Party is no stronger here than it was in *Wilkinson v. United States*, the companion case decided today. Here, as there, the Committee appears to have been relying upon a flat conclusory statement made by a paid informant, this time before a Senate Internal Security Subcommittee. See Hearings before the Subcommittee, *op. cit.*, *supra*, n. 1, at 37.

When petitioner appeared in response to this subpoena, he was asked a number of questions regarding his personal beliefs and associations, culminating in the question of whether he was a member of the Communist Party at "the instant" he affixed his signature to the petition urging defeat of the statute authorizing state antiseditious laws. Petitioner refused to answer these questions on the grounds, first, that the Committee had no power to ask the questions it put to him, and, secondly, that he could properly refuse to answer such questions under the First Amendment. For this refusal to answer he, like Frank Wilkinson who followed him on the witness stand at the Atlanta hearing,³ was convicted under 2 U. S. C. § 192 and sentenced to 12 months in jail.⁴ And, as was the case with the conviction of Wilkinson, the majority here affirms petitioner's conviction "[u]pon the reasoning and authority" of *Barenblatt v. United States*.

Again I must agree with the majority that insofar as the conviction is attacked on constitutional grounds, the decision in *Barenblatt* constitutes ample authority for its action, even though it cannot be denied that the Committee's conduct constitutes a direct abridgment of the right of petition. Indeed, I think the majority might well have, with equal justification, relied upon a much

³ See *Wilkinson v. United States*, decided today.

⁴ Petitioner was convicted on six counts and given concurrent sentences on each, but the majority, properly I think, states that "we need specifically consider here only the question covered by the fifth count." The fifth count related to the question referred to above dealing with petitioner's possible Communist Party membership at "the instant" he affixed his signature to the petition urging defeat of the statute authorizing state antiseditious laws.

⁵ 360 U. S. 109.

⁶ As indicated by my concurrence in the dissent of Mr. Justice Douglas noted above, I think the issue of the pertinency of the questions asked here should be controlled by the decision in *Watkins v. United States*, 354 U. S. 178, rather than by the decision in *Barenblatt v. United States*, 360 U. S. 109.

earlier decision of this Court, that in *Beauharnais v. Illinois*.⁷ For it was there that a majority of this Court first applied to the right of petition the flexible constitutional rule upon which the decision in this case is based—the rule that the right of petition, though guaranteed in precise and mandatory terms by the First Amendment, may be abandoned at any time Government can offer a reason for doing so that a majority of this Court finds sufficiently compelling. Ironically, the need there asserted by the State of Illinois and accepted by a majority of this Court as sufficiently compelling to warrant abridgment of the right of petition was the need to protect Negroes against what was subsequently labeled “libel . . . of a racial group.”⁸ although it was actually nothing more than the circulation of a petition seeking governmental and public support for a program of racial segregation.⁹ Thus, the decision in *Beauharnais* had all the outward appearances of being one which would aid the underprivileged Negro minority.¹⁰ This decision, however, is a dramatic illustration of the shortsightedness of such an interpretation of that case. For the very constitutional philosophy that gave birth to *Beauharnais* today gives birth to a decision which may well strip the Negro of the aid of many of the white people who have been willing to speak up in his behalf. If the House Un-American Activities Committee is to have the power to interrogate everyone who is called a Communist,¹¹ there is one thing certain beyond

⁷ 343 U. S. 250.

⁸ *Id.*, at 263.

⁹ See the petition itself, reprinted as an Appendix to my dissenting opinion in that case. *Id.*, at 276.

¹⁰ MR. JUSTICE DOUGLAS and I did not think so. See, *id.*, at 275: “If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: ‘Another such victory and I am undone.’”

¹¹ And I think the decision in this case, as well as that in *Wilkinson v. United States*, also decided today, demonstrates conclusively that the Committee is to have at least that much power.

the peradventure of a doubt—no legislative committee, state or federal, will have trouble finding cause to subpoena all persons anywhere who take a public stand for or against segregation. The lesson to be learned from these two cases is, to my mind, clear. Liberty, to be secure for any, must be secure for all—even for the most miserable merchants of hated and unpopular ideas.

Both *Barenblatt* and *Beauharnais* are offspring of a constitutional doctrine that is steadily sacrificing individual freedom of religion, speech, press, assembly and petition to governmental control. There have been many other such decisions and the indications are that this number will continue to grow at an alarming rate. For the presently prevailing constitutional doctrine, which treats the First Amendment as a mere admonition, leaves the liberty-giving freedoms which were intended to be protected by that Amendment completely at the mercy of Congress and this Court whenever a majority of this Court concludes, on the basis of any of the several judicially created "tests" now in vogue,¹² that abridgment of these freedoms is more desirable than freedom itself. Only a few days ago, the application of this constitutional doctrine wiped out the rule forbidding prior censorship of movies in an opinion that leaves the door wide open, if indeed it does not actually invite, prior censorship of

¹² These "tests" include whether the law in question "shocks the conscience," offends "a sense of justice," runs counter to the "decencies of civilized conduct," is inconsistent with "an ordered concept of liberty," offends "traditional notions of fair play and substantial justice," is contrary to "the notions of justice of English-speaking peoples," or is unjustified "on balance." See *Rochin v. California*, 342 U. S. 165, 175-176 (concurring opinion); *Uphaus v. Wyman*, 349 U. S. 388, 392-393 (dissenting opinion). Significantly, in none of these "tests" does the result to be obtained depend upon the question whether there has been an abridgment of rights protected by the plain language of the Bill of Rights.

other means of publication.¹³ And the Blackstonian condemnation of prior censorship had long been thought, even by those whose idea of First Amendment liberties have been most restricted, to be the absolute minimum of the protection demanded by that Amendment.¹⁴

I once more deny, as I have found it repeatedly necessary to do in other cases, that this Nation's ability to preserve itself depends upon suppression of the freedoms of religion, speech, press, assembly and petition.¹⁵ But I do believe that the noble-sounding slogan of "self-preservation"¹⁶ rests upon a premise that can itself destroy any democratic nation by a slow process of eating away at the liberties that are indispensable to its healthy growth. The very foundation of a true democracy and the foundation upon which this Nation was built is the fact that government is responsive to the views of its citizens, and no nation can continue to exist on such a foundation unless its citizens are wholly free to speak out fearlessly for or

¹³ *Times Film Corp. v. City of Chicago*, 365 U. S. 43.

¹⁴ See, e. g., *Levy*, *Legacy of Suppression*, at 13-15, 173, 185, 186, 190, 202-220, 241, 248, 258, 262, 263, 283, 288, 289, 293, 307 and 309.

¹⁵ See, e. g., *American Communications Assn. v. Douds*, 339 U. S. 382, 452-453 (dissenting opinion); *Dennis v. United States*, 341 U. S. 494, 580 (dissenting opinion); *Barenblatt v. United States*, 360 U. S. 109, 145-153, 162 (dissenting opinion); *Flemming v. Nestor*, 363 U. S. 603, 628 (dissenting opinion); *Uphaus v. Wyman*, 364 U. S. 388, 400-401 (dissenting opinion).

¹⁶ The use of this slogan is becoming commonplace in the opinions of this Court. Thus, in *Dennis v. United States*, 341 U. S. 494, at 509, it was said: "Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected." Then, in *Barenblatt v. United States*, 360 U. S. 109, at 127-128, we are told: "In the last analysis this power rests on the right of self-preservation, 'the ultimate value of any society,'" a statement which is reiterated today in *Wilkinson v. United States*.

against their officials and their laws. When it begins to send its dissenters, such as Barenblatt, Uphaus, Wilkinson, and now Braden, to jail, the liberties indispensable to its existence must be fast disappearing. If self-preservation is to be the issue that decides these cases, I firmly believe they must be decided the other way. Only by a dedicated preservation of the freedoms of the First Amendment can we hope to preserve our Nation and its traditional way of life.

It is already past the time when people who recognize and cherish the life-giving and life-preserving qualities of the freedoms protected by the Bill of Rights can afford to sit complacently by while those freedoms are being destroyed by sophistry and dialectics. For at least 11 years, since the decision of this Court in *American Communications Assn. v. Douds*,¹⁷ the forces of destruction have been hard at work. Much damage has already been done. If this dangerous trend is not stopped now, it may be an impossible task to stop it at all. The area set off for individual freedom by the Bill of Rights was marked by boundaries precisely defined. It is my belief that the area so set off provides an adequate minimum protection for the freedoms indispensable to individual liberty. Thus we have only to observe faithfully the boundaries already marked for us. For the present, however, the two cases decided by this Court today and the many others like them that have been decided in the past 11 years have all but obliterated those boundaries.¹⁸ There are now no

¹⁷ 339 U. S. 382, decided in 1950. And see *Uphaus v. Wyman*, 364 U. S. 388, 392 (dissenting opinion).

¹⁸ See, e. g., *American Communication Assn. v. Douds*, 339 U. S. 382; *Dennis v. United States*, 341 U. S. 494; *Garner v. Board of Public Works of Los Angeles*, 341 U. S. 716; *Adler v. Board of Education of New York City*, 342 U. S. 485; *Beauharnais v. Illinois*, 343 U. S. 250; *Galvan v. Press*, 347 U. S. 522; *Yates v. United States*,

limits to congressional encroachment in this field except such as a majority of this Court may choose to set by a value-weighting process on a case-by-case basis.

I cannot accept such a process. As I understand it, this Court's duty to guard constitutional liberties is to guard those liberties the Constitution defined, not those that may be defined from case to case on the basis of this Court's judgment as to the relative importance of individual liberty and governmental power. The majority's approach makes the First Amendment, not the rigid protection of liberty its language imports, but a poor flexible imitation. (This weak substitute for the First Amendment is, to my mind, totally unacceptable for I believe that Amendment forbids, among other things, any agency of the federal government—be it legislative, executive or judicial—to harass or punish people for their beliefs, or for their speech about, or public criticism of, laws and public officials. The Founders of this Nation were not then willing to trust the definition of First Amendment freedoms to Congress or this Court, nor am I now. History and the affairs of the present day show that the Founders were right. There are grim reminders all around this world that the distance between individual liberty and firing squads is not always as far as it seems. I would overrule *Barenblatt*, its forerunners and its progeny, and return to the language of the Bill of Rights. The new and different course the Court is following is too dangerous.

354 U. S. 298; *Uphaus v. Wyman*, 360 U. S. 72; *Barenblatt v. United States*, 360 U. S. 109; *Nelson v. County of Los Angeles*, 362 U. S. 1; *Flemming v. Nestor*, 363 U. S. 603; *Uphaus v. Wyman*, 364 U. S. 388; and *Times Film Corp. v. City of Chicago*, 365 U. S. 43.

SUPREME COURT OF THE UNITED STATES

No. 54.—OCTOBER TERM, 1960.

Carl Braden, Petitioner. | On Writ of Certiorari to the
v. | United States Court of Ap-
United States. | peals for the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE, MR. JUSTICE BLACK and MR. JUSTICE BRENNAN concur, dissenting.

At the bottom of this case are this Court's decisions in *Pennsylvania v. Nelson*, 350 U. S. 497, holding that Congress did not entrust to the States protection of the Federal Government against sedition, and *Brown v. Board of Education*, 347 U. S. 483, holding that racial segregation of students in public schools is unconstitutional. I had supposed until today that one could agree or disagree with those decisions without being hounded for his belief and sent to jail for concluding that his belief was beyond the reach of government.

On June 17, 1957, we decided *Watkins v. United States*, 354 U. S. 178, defining and curtailing the authority of Congressional Committees who sought the aid of the courts in holding witnesses in contempt.¹ We said in a

¹ In that case the witness testified freely about himself but balked at talking about others:

"I am not going to plead the fifth amendment, but I refuse to answer certain questions that I believe are outside the proper scope of your committee's activities. I will answer any questions which this committee puts to me about myself. I will also answer questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but

six-to-one decision that "when First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter" (*id.*, at 198); that "there is no Congressional power to expose for the sake of exposure" (*id.*, at 200); that the meaning of "un-American" in the Resolution defining the Committee's authority is so vague that it is "difficult to imagine a less explicit authorizing resolution" (*id.*, at 202); that before a witness chooses between answering or not answering he is entitled "to have knowledge of the subject to which the interrogation is deemed pertinent" (*id.*, at 208-209); that in that case the Resolution and the statement of the Committee's chairman was "woefully inadequate to convey sufficient information as to the pertinency of the questions to the subject under inquiry." *Id.*, 215.

Sweezy v. New Hampshire, 354 U. S. 234, decided the same day as the *Watkins* case reversed a conviction arising out of a state investigation into "subversive activities" where a teacher was asked questions concerning his relation to Marxism. THE CHIEF JUSTICE in his opinion stated:

"Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This

who to my best knowledge and belief have long since removed themselves from the Communist movement.

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates."

right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society." *Id.*, 250-251.

The concurring opinion stated:

"Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized, dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society's good—if understanding be an essential need of society—inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this

activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling."

Id., 261-262.

On June 8, 1959—two years after the *Watkins* and *Sweezy* decisions—we decided *Barenblatt v. United States*, 360 U. S. 109, where a divided Court gave only slight consideration to the type of pertinency claim that was raised in *Watkins*, *Sweezy* and the present case, in part because it could rely on the petitioner's failure to raise that objection before the Committee. See *Barenblatt v. United States*, *supra*, 123-125.

Petitioner, who was called as a witness by the Committee in July 1958, which was even before *Barenblatt* was decided, refused to answer, relying on the *Watkins* and *Sweezy* decisions "as they interpret the Constitution of the United States, protecting my right to private belief and association."

I think he was entitled to rely on them. The Act under which he stands convicted states that a witness is guilty if he "wilfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry." 2 U. S. C. § 192. A refusal to answer was held in *Sinclair v. United States*, 279 U. S. 263, 299, not to be justified because one acted in good faith, the Court saying, "His mistaken view of the law is no defense." Yet no issue concerning the First Amendment was involved in the *Sinclair* case. When it is involved, as it is here, the propriety of the question in terms of pertinency should be narrowly resolved.

The Resolution under which the Committee on Un-American Activities acted in this case² is precisely the

² The Resolution provides in relevant part:

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations

same as the one involved in *Watkins v. United States, supra*. We said concerning it, "It would be difficult to imagine a less explicit authorizing resolution. Who can define the meaning of 'un-American'? What is that single, solitary 'principle of the form of government as guaranteed by our Constitution'? . . . At one time, perhaps, the resolution might have been read narrowly to confine the Committee to the subject of propaganda. The events that have transpired in the fifteen years before the interrogation of petitioner make such a construction impossible at this date." 354 U. S., at 202.

We emphasized the need, when First Amendment rights were implicated, to lay a foundation before probing that area. The authority of the Committee must then "be clearly revealed in its charter." *Id.*, at 198. The "specific legislative need" must be disclosed.² *Id.*, at 205. The pertinency of the questions and the subject matter under inquiry must be made known "with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." *Id.*, at 209.

After *Watkins* anyone was entitled to rely on those propositions for protection of his First Amendment rights. The conditions and circumstances under which the questions were asked petitioner plainly did not satisfy the requirements specified in *Watkins*.

The setting of the six questions³ which were asked petitioner and which he refused to answer show nothing more

of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

² Petitioner was convicted on each of six counts of an indictment and sentenced to serve 12 months on each count, the sentences to

than an exercise by him of First Amendment rights of speech and press and of petition to Congress. It was not shown that they were part of a matrix for the overthrow of government. It was not shown—unless the bare word of the Committee is taken as gospel—that these constitutional activities had any relation whatever to communism, subversion, or illegal activity of any sort or kind. It was not shown where and how the Committee was ever granted the right to investigate those who petition Congress for redress of grievances.

Petitioner and his wife were field secretaries of an organization known as the Southern Conference Educational Fund. Prior to the committee hearing at Atlanta, Georgia, they wrote a letter on the letterhead of the Southern Conference urging people to write their Congressmen and Senators to oppose three bills pending

run concurrently. Therefore if any one of the counts can be sustained an affirmance would be necessary. See *Claxson v. United States*, 142 U. S. 140, 147.

“Dear Friend:

“We are writing to you because of your interest in the Kentucky ‘sedition’ cases, which were thrown out of Court on the basis of a Supreme Court decision [*Pennsylvania v. Nelson, supra*], declaring state sedition laws inoperative.

“There are now pending in both houses of Congress bills that would nullify this decision. We understand there is real danger that these bills will pass.

“We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

“It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integra-

before the Congress which would, to use their words, "nullify" a decision of this Court "declaring state sedition laws inoperative." They added "We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of the state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little prosecutor in the South is turned loose with the state sedition law."

Also prior to the Committee hearing in Atlanta, a group of Negroes petitioned Congress against the proposed Atlanta investigation of the House Committee on Un-American Activities. That petition stated:

"We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

"As Negroes residing in Southern states and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

tion, and money needed for that struggle has been spent in a defensive battle.

"It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the Court decisions outlawing segregation. Won't you write your two senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills may come up at any time."

Cordially yours,

CARL AND ANNE BRADEN,

Field Secretaries."

"We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern states. To cite only a few examples, there are the bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

"However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as 'subversive' any citizen who is inclined to be liberal or an independent thinker.

"For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees, in trying to attach the 'subversive' label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

"It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our great needs in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled 'subversive' by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for

full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

"We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood."

Petitioner was charged by the Committee with preparing that petition; counsel for the Committee later stated that the purpose of the petition was "precluding or attempting to preclude or softening the very hearings which we proposed to have here." The Committee said that it was not concerned with integration. It said that "A number of names on that letter were names of those who had been closely associated with the Communist Party. Their interest and major part does not lie with honest integration. Their interest lies with the purposes of the Communist Party. And that is what we are looking into"

Two of the questions which petitioner refused to answer pertained to the Southern Conference, the first one being "Did you participate in a meeting here at that time?" And the second one was "Who solicited quarters to be made available to the Southern Conference Educational Fund?"

Two other questions which petitioner refused to answer related to the Emergency Civil Liberties Committee. The first of these was "Are you connected with the Emergency Civil Liberties Committee?" The second one was "Did

you and Harvey O'Connor in the course of your conferences there in Rhode Island develop plans and strategy outlining work schedules for the Emergency Civil Liberties Committee." The Committee counsel charged that Mr. O'Connor was "a hard-core member of the communist conspiracy, head of the Emergency Civil Liberties Committee."

A fifth question which petitioner refused to answer related to the letter I have previously mentioned⁵ which he and his wife sent to the people urging them to write their Senators and Congressmen opposing three bills that would reinstate state sedition laws. The question relating to this letter was "Were you a member of the Communist Party the instant you affixed your signature to that letter?"

The sixth and final question which petitioner refused to answer concerned the Southern Newsletter. Counsel asked if petitioner had "anything to do" with that letter. Petitioner replied "I think you are now invading freedom of the press I object to your invasion of the freedom of the press, and I also decline to answer the questions on the same grounds. You are not only attacking integrationists, you are attacking the press."

There is nothing in the record to show that the Southern Conference or the Emergency Civil Liberties Committee or the Southern Newsletter had the remotest connection with the Communist Party. There is only the charge of the Committee that there was such a connection. That charge amounts to little more than innuendo. This is particularly clear with respect to the question relating to petitioner's membership in the Communist Party. Having drawn petitioner's attention to the letter

⁵ *Supra*, note 4.

he had written," counsel for the Committee demanded to know if petitioner was a Communist "the instant you affixed your signature to that letter." No foundation at all had been laid for that question, and from the record no purpose for it appears, save the hope of the Committee to link communism with that letter which supported this Court's decision in *Pennsylvania v. Nelson, supra*. This Court, passing on the pertinency issue in *Barenblatt v. United States, supra*, 123-125, was careful to emphasize that Barenblatt "had heard the Subcommittee interrogate the witness Crowley along the same lines as he, petitioner, was evidently to be questioned; *and had listened to Crowley's testimony identifying him as a former member of an alleged Communist student organization . . .*" (Emphasis added.) No such foundation was ever laid here.

One would be wholly warranted, I think, in light of the *Watkins* and *Sweezy* decisions that a Committee's undisclosed information or unsupported surmise would not justify an investigation into matters that on their face seemed well within the First Amendment.⁷ If *Watkins* and *Sweezy* decided anything, they decided that before

⁷ See *supra*, note 4.

The consequences that flow from this situation are manifold. In the first place, a reviewing court is unable to make the kind of judgment made by the Court in *United States v. Rumely, supra*. The Committee is allowed, in essence, to define its own authority, to choose the direction and focus of its activities. In deciding what to do with the power that has been conferred upon them, members of the Committee may act pursuant to motives that seem to them to be the highest. Their decisions, nevertheless, can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. Yet it is impossible in this circumstance, with constitutional freedoms in jeopardy, to declare that the Committee has ranged beyond the area committed to it by its parent assembly because the boundaries are so nebulous." 354 U. S., at 204.

inroads in the First Amendment domain may be made, some demonstrable connection with communism must first be established and the matter be plainly shown to be within the scope of the Committee's authority. Otherwise the Committee may roam at will, requiring any individual to disclose his association with any group or with any publication which is unpopular with the Committee and which it can discredit by calling it communistic.

